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SEXUAL ASSAULT REFORM ACT OF 1981
(Council Act No. 4-69)

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HEARING AND DISPOSITION

BEFORE THE

COMMITTEE ON

THE DISTRICT OF COLUMBIA
HOUSE OF REPRESENTATIVES

P94-67

NINETY-SEVENTH CONGRESS

FIRST SESSION

ON

H. Res. 208

TO DISAPPROVE THE SEXUAL ASSAULT REFORM ACT OF
1981

SEPTEMBER 24, 1981

Serial No. 97-6



GIS RECORD ONLY:

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H. RES. 208—SEXUAL ASSAULT REFORM ACT OF 1981, AND DISPOSITION

(Act No. 4-69)

THURSDAY, SEPTEMBER 24, 1981

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE DISTRICT OF COLUMBIA,
Washington, D.C.

The committee met, pursuant to call, at 9:45 a.m., in room 1310, Longworth House Office Building, Hon. Ronald V. Dellums (chairman of the committee) presiding.

Present: Representative Dellums, Delegate Fauntroy, Representatives Mazzoli, Gray, Barnes, Dymally, McKinney, and Bliley.

Also present: Edward C. Sylvester, Jr., staff director; Elizabeth D. Lunsford, general counsel; Robert Brauer and Donn Davis, committee staff; James T. Clark, legislative counsel; and John Gnorski, minority staff director.

The CHAIRMAN. The full Committee on the District of Columbia will come to order.

We have convened this morning to consider H. Res. 208, a resolution of disapproval which seeks to have Congress veto an act of the Council of the District of Columbia, D.C. Act 4-69, the District of Columbia Sexual Assault Reform Act of 1981.

In accordance with the provisions of the Home Rule Act of 1973, the Mayor of the District of Columbia is required to transmit all acts of the Government of the District of Columbia to Congress for a review period of 30 legislative days before such acts become law.

During this period, any Member of Congress may introduce a resolution of disapproval, which if passed would result in a congressional veto of the local act.

On July 21, 1981, the Mayor of the District of Columbia signed and transmitted to the Congress, D.C. Act 4-69, the District of Columbia's Sexual Assault Reform Act of 1981. This act had been unanimously passed by the Council of the District of Columbia on July 14, 1981.

Since the enactment of the District of Columbia Self-Government and Governmental Reorganization Act (known as the Home Rule Act) in 1973, the city has exercised the authority delegated to it by Congress to legislate and regulate the local affairs of the people by passing some several hundred laws.

[H. Res. 208 and staff factsheet follow:]

97TH CONGRESS
1ST SESSION

H. RES. 208

Disapproving the action of the District of Columbia Council in approving the
District of Columbia Sexual Assault Reform Act of 1981.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 9, 1981

Mr. PHILIP M. CRANE (for himself, Mr. McDONALD, and Mr. MARRIOTT)
submitted the following resolution; which was referred to the Committee on
the District of Columbia

RESOLUTION

Disapproving the action of the District of Columbia Council in
approving the District of Columbia Sexual Assault Reform
Act of 1981.

1 *Resolved*, That the House of Representatives disap-
2 proves of the action of the District of Columbia Council de-
3 scribed as follows: The District of Columbia Sexual Assault
4 Reform Act of 1981 (D.C. Act 4-69), signed by the Mayor of
5 the District of Columbia on July 21, 1981, and transmitted
6 to the Congress pursuant to section 602(c)(2) of the District
7 of Columbia Self-Government and Governmental Reorgani-
8 zation Act on July 21, 1981.

○

FACTSHEET—THE D.C. SEXUAL ASSAULT REFORM ACT OF 1981: D.C. ACT 4-69

There have been inquiries regarding the subject Act. The following information is provided to assist in responding to those inquiries.

HISTORY OF THE LEGISLATION

On July 14, 1981, the District of Columbia Council, by a unanimous vote, approved the D.C. Sexual Assault Reform Act of 1981. The Act was signed by the Mayor of the District on July 21, 1981, and transmitted to the Congress for the 30-day Congressional review period prescribed by the D.C. Home Rule Act.

CONGRESSIONAL ROLE

Pursuant to the District of Columbia Self-Government and Governmental Reorganization Act of 1973, as amended (Public Law 93-198, approved December 24, 1973, 87 Stat. 774, commonly referred to as the "D.C. Home Rule Act"), legislation passed by the D.C. Council and approved by the Mayor is sent to the Congress for a thirty legislative day review period. At the end of the 30-day period, the legislation becomes law, unless both Houses of Congress (one House in criminal code legislative matters) pass a Resolution of Disapproval. Any Member may introduce a Resolution of Disapproval, and such Resolution is referred to the District of Columbia Committee for disposition. If the Committee supports the Resolution, it is then sent to the House floor for a vote. If the Committee does not support the Resolution, it generally dies there. On September 9, 1981, Congressman Philip M. Crane (R., Ill.) introduced a Resolution of Disapproval of D.C. Act 4-69. The Committee on the District of Columbia will hold hearings and take a vote on the Resolution soon. The 30-day Congressional review period expires on or about October 5, 1981.

PURPOSE OF THE LEGISLATION

According to the Report accompanying D.C. Act 4-69, the purpose of the legislation is to "modernize and consolidate the District of Columbia's law regarding sexual assault." Under the present system, the laws regulating sexual activity or conduct can be found in seven separate chapters of Title 22 of the District of Columbia Code.

RELEVANT BACKGROUND

While the D.C. Home Rule Act was enacted in 1973, Congress withheld transfer of authority over the criminal laws of the District (Titles 22 through 24 of the D.C. Code) until 1979. Prior to the transfer, Congress established the D.C. Law Revision Commission whose charge was to review the common law and statutes relating to the District and to recommend necessary changes. In 1978, a Joint Report was issued by the House District of Columbia Committee's Subcommittee on Judiciary and the Senate Subcommittee on Governmental Efficiency and the District of Columbia. The Report was based upon recommendations for reform of the District's basic criminal code as proposed by the D.C. Law Revision Commission. The letter of transmittal which accompanied the report stated in pertinent part:

"The present criminal law of the District of Columbia is an outdated relic of mosaic statutes, cases, and administrative interpretations passed into law, in a piecemeal fashion, over a period of time that stretches from 1901 to the present. Time has changed the social mores and standards by which we live today. The criminal laws of the District have not kept pace with that change. With the proposals made by the Law Revision Commission and the extensive hearings record and recommendations from the Subcommittees, the City Council will stand in the unique position of being able to begin the modernization process without further delay."

On the strength of the Joint Report, the D.C. Council undertook to begin the process of reforming the District's criminal laws. D.C. Act 4-69 is one product of that effort.

EXPERIENCE IN OTHER JURISDICTIONS

The following chart details the state of the criminal law in other jurisdictions as it relates to adultery, fornication and sodomy. Where the chart indicates "yes", such activity is a violation of the criminal law in that jurisdiction. Where the chart indicates "no", such activity among consenting individuals is not a violation of the criminal laws of that jurisdiction. The chart follows:

CRIMINAL CODE PENALTY

State	Adultery	Fornication	Sodomy
Arkansas	No	No	Yes.
Alabama	Yes	No	Yes.
Arizona	Yes	No	Yes.
Georgia	Yes	Yes	Yes.
North Carolina	Yes	Yes	Yes.
South Carolina	Yes	Yes	Yes.
Virginia	Yes	Yes	Yes.
West Virginia	Yes	Yes	No.
Maryland	¹ Yes	¹ Yes	Yes.
Pennsylvania	No	No	No.
Delaware	No	No	No.
New York	Yes	No	No.
New Jersey	No	No	No.
New Hampshire	Yes	Yes	No.
Rhode Island	Yes	¹ Yes	Yes.
Massachusetts	Yes	Yes	No.
Florida	Yes	No	Yes.
Vermont	No	No	No.
Minnesota	Yes	No	Yes.
Kentucky	No	No	Yes.
Tennessee	No	No	Yes.
Ohio	No	No	No.
Utah	Yes	Yes	Yes.
Idaho	Yes	No	Yes.
Nebraska	Yes	No	No.
Maine	No	No	No.
Connecticut	No	No	No.
California	No	No	No.
Louisiana	No	No	Yes.
Iowa	No	No	No.
Colorado	No	No	No.
Washington	No	No	No.
Oregon	No	No	No.
Nevada	No	No	Yes.
New Mexico	No	No	No.
Montana	No	No	Yes.
North Dakota	Yes	No	No.
South Dakota	No	No	No.
Alaska	No	No	No.
Hawaii	No	No	No.
Texas	Yes	Yes	Yes.
Michigan	Yes	No	Yes.
Illinois	Yes	Yes	No.
Oklahoma	Yes	No	Yes.
Indiana	No	No	No.
Kansas	Yes	No	Yes.
Mississippi	Yes	Yes	Yes.
Missouri	No	No	Yes.
Wisconsin	Yes	Yes	Yes.
Wyoming	No	No	No.

¹ Shows criminal violation for which \$10 fine is leveled.

As the chart indicates, 40 states have laws similar or nearly similar to D.C. Act 4-69 and do not impose criminal penalties for either adultery and/or fornication and/or sodomy. Eighteen states do not impose criminal penalties for either category. The eighteen are Pennsylvania, Delaware, New Jersey, Maine, Connecticut, California, Iowa, Colorado, Washington, Oregon, New Mexico, South Dakota, Alaska, Hawaii, Ohio, Indiana and Wyoming.

WHAT D.C. ACT 4-69 DOES

According to the D.C. Council Report which accompanies D.C. Act 4-69, the Act seeks to provide "comprehensive reform to make (sexual conduct) laws more inclusive and flexible, focusing on the issues of force and fraud, rather than upon the issue of consent." The Report further states that the legislation is designed to broaden the traditional concept of rape by expanding the forms of compulsion, eliminate all references to gender, expand the protection against sexual abuse of previously unprotected classes of persons based upon coercion due to superior position or status, make more flexible the prohibitions against sexual conduct with children by grading the crime according to the age of the victim and the perpetrator, and repeal all prohibitions on non-commercial sexual conduct between consenting adults.

Section-by-section outline

Section 1. Short Title.—District of Columbia Sexual Reform Act of 1981.

Section 2. Definitions.—"Bodily injury", "custodian", "guardian", "parent", "relative", "sexual act", "sexual contact", and "spouse", "inmate or patient" are defined.

Section 3. Sexual Assault in the First Degree.—The most serious of the sexual assault offenses, punishable by imprisonment up to 20 years. Prohibits forcing another to engage in sexual conduct by (1) actual physical force, (2) threat, or (3) substantial impairment of the victim's mental state through the use of drugs, alcohol or other means.

Section 4. Sexual Assault in the Second Degree.—A crime punishable by ten years of imprisonment. Prohibits engaging in sexual activity with another who is incapable of withholding consent due to a mental deficiency or physical disability or if a person is physically incapable of resisting or incapable of withholding consent because of drugs, alcohol, or other reasons.

Section 5. Unlawful Sexual Acts With a Child.—A crime punishable by imprisonment up to 20 years. Prohibits sexual activity with a child under 16 years of age.

Section 6. Unlawful Sexual Act With a Ward.—A crime punishable by up to eight years of imprisonment. Prohibits a parent, relative or guardian from engaging in sexual activity with a child under age 18. Also a person in a position of responsibility for a child under 18 who uses such a position to cause the sexual act to occur.

Section 7. Unlawful Sexual Act With an Inmate or Patient.—A crime punishable by up to five years imprisonment. Prohibits a supervisor or one who exercises disciplinary control over an inmate or patient from engaging in a sexual act with the inmate or patient or from causing the inmate or patient to engage in a sexual act with a third person.

Section 8. Sexual Contact in the First Degree.—A crime punishable by up to five or eight (depending upon level of coercion) years imprisonment. Prohibits a person from compelling another to participate in or submit to sexual contact, such as touching a person's intimate parts.

Section 9. Sexual Contact in the Second Degree.—A crime punishable by one year imprisonment or a fine of \$1,000 or both or three years imprisonment or a fine of \$3,000 or both (depending upon age of victim). Prohibits any sexual contact or touching of intimate parts.

Section 10. Additional Penalties for Parents, Grandparents, Aunts and Uncles.—The court is allowed to impose an additional penalty of up to one and one half times the maximum penalty if the perpetrator of crimes under sections 7 and 8(a) through 8(d) is a parent, grandparent, uncle, aunt, related by blood (whole or half) or related by adoption.

Section 11. Prosecution of Persons Under Age 18.—No person under age 18 may be prosecuted for the crimes under this Act, except for the crime of Sexual Assault in the First Degree.

Section 12. Amendatory Section.—Amends current law to make it consistent with the new Act.

Section 13. Repealer Section.—Repeals current law to make it consistent with the new Act.

WHAT D.C. ACT 4-69 DOES NOT DO

Several claims have been made about the effect of D.C. Act 4-69. Many of these claims do not fully state the facts. Below is a series of such statements and responses to them. It is particularly noteworthy that an original proposal to lower the age of consent to sexual activity for girls from age 16 to age 12 which received widespread media attention was not approved by the D.C. Council and is not a part of D.C. Act 4-69.

1. Claim: "Repeals the statute under which Congressman Hinson was arrested in the Longworth Building."

Fact: Activity which Mr. Hinson was alleged to have committed would continue to be prosecutable as a public indecent act under D.C. Code, sec. 22-1112.

2. Claim: "Effectively removes all sanctions against homosexual conduct in the District of Columbia."

Fact: The Act does not eliminate all prohibitions against homosexual conduct. Indeed, the act increases the prohibitions. The penalty for forcible homosexual activity is doubled. The District law on prostitution is amended to prohibit homosexual, as well as heterosexual prostitution. The laws prohibiting statutory rape have been expanded to prohibit sexual conduct, including homosexual conduct, with boys as well as girls where it now only protects young girls from sexual intercourse. The laws against public homosexual conduct would remain in force. Section 22-3502 of the D.C. Code would be repealed by the law. Section 22-3502 provides a ten year maximum penalty for certain sexual conduct and applies to heterosexual as well as homosexual activity. Indeed, it applies to conduct by and between married parties committed in the privacy of their bedroom. Taken in the context of other laws remaining upon the books and to be placed upon the books, the only prohibition removed by this repeal is that applying to adult, consensual, private, noncommercial activity. While that conduct could be homosexual in character, most of it is heterosexual and much of that is between married people.

3. Claim: "Repeals statutes prohibiting adultery and fornication."

Fact: The bill does not remove all sanctions regarding adultery and fornication. Adultery remains a consideration in the child custody and property disposition aspects of divorce cases as does fornication in paternity cases. What is repealed is the one-year maximum criminal penalty for fornication and the two-year maximum penalty for adultery. Thus, adultery and fornication are not socially uncondemned much less condoned or encouraged. They are simply not on the basis for incarceration.

4. Claim: "Repeals the D.C. law prohibiting sexual seduction of a child by a teacher."

Fact: Any sexual activity with any person under the age of 16 will remain a most serious crime under the bill, even if consensual. Section 22-3002 of the Code would be repealed which prohibited consensual sexual conduct by a male teacher with a female student between the ages of sixteen and twenty-one. However, sec. 6 of the bill would criminalize this activity if the relationship were custodial, i.e. if the teacher were in a supervisory relationship in a residential setting.

5. Claim: "Legalizes a sexual advance by a teacher, against a sixteen-year old child, as long as no force is used."

Fact: Indecent sexual proposals would continue to be prosecutable under sec. 22-1112 of the D.C. Code.

6. Claim: "Reduces the penalty for forcible rape from life imprisonment to twenty years in jail."

Fact: The maximum penalty for rape was lowered from life to twenty years at the unanimous request of women's groups who argued that more convictions could be obtained if judges, juries, and prosecutors were not so taken with the extremity of the punishment.

RESOLUTIONS OF DISAPPROVAL

While we have considered 10 resolutions of disapproval, only once has the Congress found it necessary and proper to exercise its veto power over an act of the local government. This was in the instance of the Location of Chanceries Act, which was an attempt on the part of the city to zone the location of the chanceries of foreign governments within the District of Columbia.

The use of the congressional veto in this instance was obviously provoked by what appeared to the majority of my colleagues to be a clear and compelling Federal interest.

CRITERIA FOR CONGRESSIONAL VETO

In the past, the committee has relied upon its perception of three primary questions in considering whether to veto local legislation:

1. Has an action of the city exceeded the powers granted to it under the Home Rule Act?

This is the same question sometimes raised in court challenges. Our committee does not seek to replace the courts regarding this question, but we have been concerned as to whether the legislative powers of Congress have been properly carried out.

2. Has the city, on the face of any act, clearly violated any constitutional principle? This again is a question which courts are competent to answer; hence, while it guides our consideration, Congress is cautious not to interfere in the judicial process.

3. Has the city interfered in a Federal question or obstructed the Federal interest. This question can be raised even when the city conscientiously carries out its responsibilities under the charter, but fails to balance local and Federal interests judiciously.

FEDERAL INTEREST

So on the one hand we are talking about the question of exceeding the powers granted by Congress in the 1973 Home Rule Act, the question of constitutionality, and finally the question of whether or not there is a compelling Federal interest involved.

Clearly what we are suggesting is that it is not our place here in the Congress of the United States, and specifically in this committee, to address ourselves to any substantive questions of the act itself.

In my estimation, that is more appropriately discussed and debated and acted upon at the local level, which corresponds with the spirit, it seems to me, and the intent of the Home Rule Act.

As we listen to testimony today we will be interested in the views of the witnesses on these three questions as well as other relevant matters they may wish to discuss.

Because the act which gave rise to H. Res. 208 has been the subject of much highly charged public debate, the Chair would like at this point to give strong and clear emphasis to my view of the parameters of the committee's responsibilities in this matter.

I believe that the proper grounds for our consideration are those that I have outlined. We are not required by the legislative mandate under which we are convened here to provide a public forum for those who would question and second-guess the wisdom of what the local jurisdiction has legislated by powers justly held and/or delegated.

However, I do recognize that members of this committee may differ in interpreting the extent of the Federal interest in any local act and therefore what action ought to be taken.

Nonetheless, in my opinion, a great flaw and inherent danger is created by keeping the local government in a halfway house between autonomy and subservience.

However proper their actions may be, the door is always open to some who, if permitted, will abuse the real intent of congressional oversight here in the District of Columbia to proselytize in the interest of their own narrow ideals and goals.

I do not believe that permitting this kind of unfair intrusion into the affairs of the District of Columbia is in the best interest of

either the District of Columbia or the Congress of the United States.

I do not believe that it is either reasonable or fair to assume that the people of every jurisdiction except the District of Columbia are capable of making prudent and moral decisions about their governance, and that the Congress is the place to constantly try to prove this fallacy.

Without objection, I ask that any written testimony be accepted for the record.

Before we proceed, I would like to thank my friend and fellow Californian, Representative Dymally, and the members of his Subcommittee on Judiciary and Education for their understanding and cooperation in moving this matter to the full committee to allow for a timely hearing.

I now yield to my friend and distinguished colleague, the gentleman from Connecticut, Mr. McKinney.

Mr. McKINNEY. Thank you, Mr. Chairman.

As usual, you have taken almost every remark that I was going to make and said them exactly as I would have said them.

RESOLUTIONS OF DISAPPROVAL

Mr. Chairman, ever since I got to the Congress 11 years ago I have been trying to abolish this committee. It is this type of resolution of disapproval that makes me feel even more strongly that this committee should be abolished.

We have had resolutions of disapproval on gas station operation right on through to this final personal issue, which is one for the citizens of the District of Columbia and themselves only to decide.

FEDERAL INTEREST

In the 8 years of home rule, I have been forced twice to vote for a resolution of disapproval. Both of those resolutions I felt had very obvious Federal problems. One was the issue of statehood, which to this Congressman totally change the constitutional concept of the Federal city.

The second was obviously the chancery issue, which had vast implications for the Federal Government in its operations across the world.

I only question, and I will only discuss in procedures of this type, three issues. Has the city of Washington exceeded its authority? It certainly has not.

Has the city of Washington violated the Constitution? It certainly has not.

Is there any Federal interest impinged by this action? There certainly is not.

I would suggest also that the "land of steady habits," as Connecticut is commonly referred to by its residents, as crossed this bridge in 1969 without so much as a whisper, and I think that this committee should pass this issue on those three questions and those three questions only.

Thank you.

The CHAIRMAN. I thank the gentleman.

The gentleman from the District of Columbia.

Mr. FAUNTROY. Thank you, Mr. Chairman.

There are many reasons why I oppose House Resolution 208, a resolution to disapprove D.C. Act 4-69, an act by the District of Columbia government which is before us under the Congressional Review provision of the Home Rule Act.

D.C. Act 4-69 is a product of a process which involved the Congress before criminal law powers were transferred to the District, has been the subject of extensive public hearings, has emerged from the D.C. Council's legislative path as prescribed in the Home Rule Act, has been endorsed by the Mayor of the District, and in my view, does not involve a compelling Federal interest to justify intervention by this committee or by the Congress.

LAW REVISION COMMISSION

In August 1974, Congress created the D.C. Law Revision Commission. That Commission in 1977 and 1978, conducted a series of hearings on the criminal laws of the District of Columbia.

Following those hearings, the Commission recommended that the criminal laws in the District be reformed and updated so as to conform with the trend in other jurisdictions.

In 1978, as a result of the Commission's recommendations, a joint Senate and House committee issued a report which stated in part:

Time has changed the social mores and standards by which we live today. The criminal laws of the District have not kept pace with that change * * * The city should begin the modernization process without further delay.

On the strength of that joint report, the D.C. Council undertook to modernize and consolidate its criminal laws. D.C. Act 4-69 is one product of that effort.

STATE LAWS

There are 40 States which have laws similar or nearly similar to the major provisions of D.C. Act 4-69, and the act generally follows the Model Penal Code.

Mr. Chairman, as you are well aware, because I represent the people of the District of Columbia in Congress, I have often participated in major policy debates in the community and among the citizens, and I have vigorously urged the adoption of my personal view. My view has not always been accepted by the people through the legislative process within the city.

However, once the people have made their choice known by initiative, referendum or through their elected officials, I have always respected that choice. That, it seems to me, is the democratic process. To do otherwise would suggest that justice, equality, and fair play and an orderly society are mere platitudes that we put whenever it is convenient.

I think our system of government means more than that. I think the members of this committee and of the Congress hold the fundamental underpinnings of our government in higher regard than that.

When Congress passed the Home Rule Act in 1973, we withheld from the local government authority over its criminal laws. That authority was, however, transferred in 1979. The D.C. Council may

now act in this area, and they have properly done so in this instance.

We may not agree with the substance of the act, but it is not our business to act like kings or dictators. Our business is to legislate Federal laws, and we have a difficult enough time doing that than to spend more time deciding where kites can be flown in the District or interfering in other clearly local matters.

I urge a "no" vote on this resolution. A "no" vote does not endorse the substance of this legislation. A "no" vote demonstrates respect for the most precious American right: Government by the people.

ACT 4-69

Normally I do not welcome these hearings on resolutions of disapproval, but in this case I do welcome it for the reason that at least we will be able to lay to rest some claims being made about this well-considered act by our local government, that the act repeals statutes, for example, which led to the arrest of Congressman Hinson here in the Longworth Building, or that it removes all sanctions against homosexual conduct in the District of Columbia, or that it repeals a statute prohibiting adultery and fornication.

I welcome the opportunity for the hearing, to lay to rest those misleading comments and claims that have been made with respect to this law passed by our duly elected representatives in the local government.

I thank you for this opportunity.

The CHAIRMAN. I thank the gentleman for his opening remarks. Are there any additional opening remarks?

The gentleman from Virginia.

Mr. BLILEY. Thank you, Mr. Chairman.

We are here today for committee action on H. Res. 208, a resolution to disapprove District of Columbia Act 4-69. This act reforms the District's Criminal Code sections on sexual assault and sexual practices. A revision of this code is indeed needed.

The District of Columbia Law Revision Commission, created by the Congress, recommended that this be done and recommended specific language for the revision.

The act which the District Council adopted and which is before us today incorporates much of the recommended language. There are good provisions in this act, including the broadening of the definition of rape to include homosexual attacks, the retention of the age of consent at 16 years instead of lowering it to 12 years as originally introduced, and the recognition that a sexual assault may take place between a married couple who are separated and not living together.

These provisions reflect the world as it exists today and are in accord with our traditional beliefs and moral principles.

RAPE

I must point out, however, that this act does more than redress certain outdated sections of law. D.C. Act 4-69 reduces the maximum penalty for forcible rape from life in prison to 20 years.

As we all know, the current rules on parole and time off will allow a person sentenced to 20 years to get out and back on the streets in only a few years and in this instance 20 years is the maximum sentence, not the mandatory or usual sentence.

The trauma and suffering that can be caused by rape as well as the psychological damage to the victim is a terrible thing and can last a lifetime and keep the victim from enjoying a normal life.

This act doubles the penalty for a homosexual assault, which at least begins to acknowledge the seriousness of this form of rape, but it cuts the penalty for heterosexual rape drastically—no matter how heinous the attack or how brutal the damage to the victim.

In a time when women's rights are so prominently discussed and advocated, I find it difficult to understand the attempt to lessen the penalty for the forcible denial of a woman's most basic right, which is the protection of her own body.

D.C. Act 4-69 would decriminalize, and thus legitimize, almost any sexual act or practice between two, or more, people as long as they all agreed to it.

SODOMY

The law in such matters cannot be neutral. This act, by specifically legalizing unusual sexual practices, would condone them.

The moral and ethical traditions of this Nation do not condone acts such as sodomy and adultery and I do not believe that the people of America believe that they are acceptable and should be allowed by law in the Nation's Capital.

D.C. Act 4-69 contains provisions which are good and are needed, but it also contains provisions which are not only bad, they are wrong.

You have heard, and I am certain that you will continue to hear, many well-meaning people say that they do not like all of the provisions of this act either, but that it is not our job to overturn a legally adopted law in the District of Columbia.

DISTRICT OF COLUMBIA

I must point out that the District is a unique jurisdiction in American government. The District of Columbia is the Nation's Capital and was set up solely for that purpose by the Congress.

This fact is stated in the Constitution and final legislative authority is explicitly reserved to the Congress.

The Founding Fathers clearly stated their desire for the Nation's Capital to be a special place and for the final authority over it to rest with the people of the Nation through their elected representatives.

We, as Members of Congress, cannot and must not deny our constitutional responsibilities. We are required to uphold the Constitution by our oath of office and I will not abrogate that oath and that responsibility and allow the enactment of a law which I know to be wrong in the Nation's Capital.

The members of this committee know that I am an advocate of home rule. I feel that the District should govern itself to the maximum extent possible, but the Constitution requires that the Congress, as representatives of the people of this Nation, hold final au-

thority over the laws of the District and I cannot abdicate that responsibility.

I will close my statement by saying that I support H. Res. 208 and urge my colleagues to do likewise. By disapproving this act, the District will have to revise this act in order to more closely conform to recognized moral standards and traditions.

I thank you, Mr. Chairman. I apologize for the length of the statement.

The CHAIRMAN. I thank the gentleman for his opening remarks. Mr. MAZZOLI. Mr. Chairman?

The CHAIRMAN. The gentleman from Kentucky.

Mr. MAZZOLI. Thank you, Mr. Chairman. I will just take a few minutes.

I commend the District of Columbia and its Mayor for careful deliberation of this bill, D.C. Act 4-69. In good conscience, Mr. Chairman, I cannot support it. I am a supporter of home rule and, of course, I came to this committee in 1973, in part, in order to pass a home rule bill. I think over the years since 1973, I have exhibited my support for the District in word as well as in deed.

As my friend from Connecticut has said, maybe we shouldn't have these responsibilities. Maybe this committee should be abolished. I don't know. But as long as the committee is here, and as long as we do have these responsibilities, I cannot abrogate them and I think that a matter of conscience is a matter that has to be factored into our deliberations.

I have read as carefully as I can. I am looking forward to the testimony, because I am not sure that I understand the subtleties here. But if I read section 6 correctly, the analysis which was provided to us by staff, deals with unlawful sexual acts with a ward, and this then is the new language: "A crime punishable by up to 8 years of imprisonment."

INCEST

Now, this act, section 6, prohibits a parent, relative, or guardian from engaging in sexual activity with a child under age 18. Now, if I understand that correctly, that means that a father could have an incestuous relationship with his daughter, who happens to be 18 years and 1 day old, and that is not sanctionable. That is totally approved.

I think in any law that would sanction incest, I don't care if the daughter or perhaps son, if there is an incestuous relationship between a mother and a son, the age of 18 has nothing to do with it.

I think it is a crime against humanity. I think incest is a crime against anything that natural law would suggest is a proper relationship. If I understand correctly, Mr. Chairman, section 6 would sanction incest.

We can talk about sodomy between consenting adults and we can talk about fornication between consenting adults and adultery itself, and you can knock that one around pretty well. But you cannot, in my judgment, knock around incest. To say that this law doesn't have an implication morally, physically, spiritually, and socially across, not just D.C., but across the land, I would argue that point very vigorously with anyone here.

TEACHER AND PUPIL

Furthermore, if I read the act correctly, Mr. Chairman, it repeals a section of D.C. law which currently prohibits consensual sexual conduct between a male teacher with a female student between the ages of 16 and 21.

Now, if I understand correctly, the act would repeal it. This means that a male teacher could have consensual sexual relations with a woman student over the age of 16, and that would not be a criminal offense.

Now, we all know and have read very frequently about the kind of intimidation, the kind of coercion which teachers sometime have over students. They are looking for grades. Everybody has to make it in the world. They have got to get to college. They have got to get their A's or B's or they are going to be dropped overboard.

If I understand at all correctly what I have read, we are now condoning further intimidation. We are giving a teacher greater opportunities of coercion, by saying that a male teacher can have a sexual relationship with a female student. Also, I guess it would work the reverse, a female teacher with a male student, over the age of 16. The act makes this totally approved behavior, as long as they consented to it.

And who is to say that if I say you get an A on the line or a D on the line that is or isn't consenting. You don't force consent.

Mr. Chairman, to sum it up, and I appreciate the work done by the District of Columbia, it has been a privilege and a proud moment in my congressional life to serve on this committee. And I think that the gentleman from California, our distinguished chairman, has known that I have in the parlance of Congress taken a bath many times for the District of Columbia. But this is one time where I cannot in my conscience and in my judgment of what is correct for this United States, of which the District of Columbia is a very important part, in fact, is a leader, I cannot sanction this bill.

The CHAIRMAN. I thank the gentleman for his opening remarks. Are there any additional opening remarks?

If not, the Chair would now go to the witness list. Just prior to that, the Chair would like to say specifically to those members of the committee who have spoken eloquently in support of the House resolution before us, that while I understand the nature of your arguments, I don't think that is the matter before us, with all due respect to your intellect and your politics.

CRITERIA FOR CONGRESSIONAL VETO

I just think that at some point there has to be some criteria that determines when we intervene into the lives of people in the District of Columbia and when we do not intervene, and I think that it is terribly important that those criteria used should be clearly focused, should be easily understandable, and I think that we have laid those matters out.

We have raised the question of whether or no the District of Columbia has violated their jurisdiction, and I don't think that a strong case can be made in that regard. No one has raised—even those of you on the committee who have spoken eloquently in support of it—the question of constitutionality, abuse of power, or—

Mr. MAZZOLI. Mr. Chairman?

The CHAIRMAN. I will yield briefly if you will let me finish my comment. Then I will yield to the gentleman.

I think all of my colleagues would agree with me that in the case of any piece of legislation with the slightest degree of controversy, there are going to be members who wax eloquently on either side of that question, and then it becomes a matter of judgment.

I am simply saying here that we are not prepared, and I do not believe that it is our responsibility, to become the City Council of the District of Columbia. In our wisdom we chose not to do that in 1973.

We did provide a provision where the Congress could keep its hand in, and we all know why we wrote that legislation, because we wrote it at a level of least resistance, and there was a tremendous number of compromises in that act that I don't feel we should have gone forward with.

We should have made it very clear, but we chose not to do that because politicians tend to like to walk both sides of the street. We wanted to give them freedom but at the same time keep them in subservience, and I say that is the halfway house we have the District of Columbia in.

What I have tried to do, and I think that most of us on the committee have tried to do, is to lay out some guidelines in these very sticky matters.

MORAL MAJORITY

Clearly this is a highly emotional issue. I mean when we have the leadership of a national organization like the Moral Majority wanting to come to this obscure meeting in room 1310 of the Longworth Building, then clearly this is a controversial matter, but I think that we should be just as deliberative, just as conscientious on this highly emotional issue as we would on some more earth-bound pedestrian question, and I think that that is the measure of our credibility and that is the measure of our wisdom on this committee, and I would continue to argue very profoundly that while I appreciate the level of your intellect and your politics, your comments do not go to the matter before us.

I yield to my colleague.

Mr. MAZZOLI. Thank you very much.

I would just note for the record, and the gentleman is aware of our conversation of yesterday, in which I discouraged the appearance of the Moral Majority because I did not want this to become a sideshow or some sort of an emotional harangue.

CRITERIA FOR CONGRESSIONAL VETO

I don't think we need that. I think each of us knows where we are on the issue. But with respect to my chairman, I think we are looking at this in the indices which he has laid out, which I think

are certainly accurate, I just think that if, for example, a matter had been sent up to the Hill that had been passed by the District of Columbia which was blatantly racist, which was totally out of kilter with affirmative action as we understand it, I could not in conscience support that because I would have to weigh its Constitutionality. I would ask, have they exceeded their authority and what have you, so long as we have the committee. Still, I might vote to abolish the committee and its oversight. Nonetheless, I think there are some circumstances which would occasionally require the gentleman, who otherwise has given us the standard which should be applied to these resolutions, to deviate from those standards.

It just happens the gentleman from Kentucky finds this to be for him one of those circumstances.

The CHAIRMAN. I thank my colleague.

I would simply say that in the matters the gentleman raised, this particular gentleman would argue profoundly that that would be a violation of constitutional law, and would support the gentleman.

What I am saying is at this point I don't see that in this particular issue.

I yield to the gentleman from Virginia briefly.

FEDERAL INTEREST

Mr. BLILEY. I appreciate that. I think this clearly falls within category 3, the Federal interest. This city is our Nation's Capital and to it come visitors from all over the world, thousands of them every year, and these laws, particularly the sexual laws, could have an effect on them and on our national image as well. It is for that reason that I support this bill of disapproval.

The CHAIRMAN. I thank the gentleman for his comments, and the Chair would certainly be listening very carefully as to whether that argument is developed during the course of the hearing.

There are five witnesses, Hon. Marion Barry, Mayor of the District of Columbia, charged with the responsibility under the Home Rule Act of submitting legislation passed by the District of Columbia in a timely manner to the Congress of the United States; Ms. Judith Rogers, who is the Corporation Counsel, and her testimony in this matter would be obvious. We have Hon. Arrington Dixon, who is the Chairperson of the Council of the District of Columbia. I note on my paper here that Mr. Dixon has submitted written testimony, although I see the gentleman.

Do you plan to speak? Then we would hear from Mr. Stephen Danzansky, who is the Chairperson of the District of Columbia Law Revision Commission, whose views on this matter are obvious. He too, I understand, has submitted written testimony.

The Chair had chosen to conclude with the remarks of our distinguished colleague, the gentleman from Illinois, Mr. Philip Crane, who introduced the resolution. I talked with the gentleman on yesterday, and unfortunately he is not able to be here today, and so Mr. Crane has submitted written testimony.

[Mr. Crane's prepared statement follows:]

TESTIMONY ON THE D.C. SEXUAL ASSAULT ACT BY PHILIP M. CRANE

Mr. Chairman, I thank you for the opportunity to bring my views before the Committee regarding D.C. Act 4-69. On September 9, 1981 I introduced H. Res. 208, a Resolution of disapproval of the Act for consideration by this committee and the House.

The District of Columbia Home Rule Act, 87 Stat. 744, specifically empowers the Congress to continue exercising responsible authority with respect to the laws in the nation's capital. Section 601 of the Act stipulates:

Notwithstanding any other provision of the Act, the Congress of the United States reserves the right, at any time, to exercise its constitutional authority as legislature for the District, by enacting legislation for the District on any subject, whether within or without the scope of legislative power granted to the Council by this Act, including legislation to amend or repeal any law in force in the District prior to or after enactment of this Act and any act passed by the Council.

Mr. Chairman, my opposition to D.C. Act 4-69 is based on the fact that it is simply bad legislation. Not only are portions of the proposal ill-conceived but the manner in which the measure was considered and approved is fundamentally flawed.

A number of groups within the district including the D.C. Federation of Civic Associations, the Federation of Citizens Associations and numerous religious organizations oppose the measure. In sum, as it was finally drafted, the Act does not reflect the preferences of the citizens of the District of Columbia, and I am confident it is not in accord with the sentiments of the majority of Americans. And that, after all, is of paramount concern to the Congress. The desires of the members of the D.C. City Council are, quite properly, of secondary importance.

Mr. Chairman, I believe there are many aspects of this bill which do in fact represent an improvement in the District's statutes and I would be happy to support them. But the fact is that D.C. Act 4-69 is now such a hodgepodge of patchwork provisions that it's nearly impossible to separate the wheat from the chaff. We would be ill-advised at this juncture to attempt to salvage what is in effect a disjointed and poorly reconstructed legislative proposal.

It would be of far better service to the citizens of the District and the interests of all Americans to begin the process anew -- and properly -- by returning this measure to the City Council for a thorough review and restructuring of its provisions by the D.C. Law Revision Commission. The City Council should be instructed to subject the newly created proposal to a rigorous legal evaluation and a full and proper public hearing process which will give all citizens of the community an opportunity to make known their views. Only after this process has been adequately pursued should the measure be returned for consideration by the Congress.

Mr. Chairman, I believe this course to be the appropriate one, because enactment of the proposal would benefit no one, and in fact could harm many who would be adversely affected by its ill-considered provisions. It is not my intention to debate the moral implications of these shortcomings. Individual conduct is not properly a concern of government unless that conduct harms others or deleteriously affects the social order. There is little doubt that the proposals in question are unacceptably offensive on both points.

For example, under the terms of the proposal the maximum term for convictions in cases of forcible rape would be reduced from possible life imprisonment to no more than 20 years. Penalties for sodomous homosexual conduct and seduction of children currently contained in Sections 22-3502 and 22-3002 of the D.C. Code would, under Section 13 of D.C. Act 4-69, be completely eliminated -- thus making such acts legal.

Who could possibly benefit from measures which sanction conduct none of us consider acceptable? Homosexual activity and the seduction of children -- consensual or otherwise -- are fundamentally, ethically and objectively wrong. For this body to acquiesce measures such as D.C. Act 4-69 which legitimize such activity would be an abdication of our responsibility to the citizens of this country for what we condone here in the nation's capital signals the rest of the country that such standards of conduct are and should be acceptable elsewhere. The members of this committee know full well that their constituents would not condone these standards. Why then permit their reign in the city which fully belongs to all Americans?

It is for this reason, Mr. Chairman, that I urge this Committee to recommend to the House that D.C. Act 4-69 be disapproved and that the measure be returned to the D.C. City Council for thorough reconsideration. Thank you.

The Chair would like to call the first witness, Hon. Marion Barry, Mayor of the District of Columbia, and welcome you before the committee this morning. Ms. Rogers, Corporation Counsel, I welcome you as well.

She will be testifying along with the Mayor.

STATEMENTS OF HON. MARION S. BARRY, MAYOR, DISTRICT OF COLUMBIA, AND JUDITH ROGERS, CORPORATION COUNSEL

Mayor BARRY. Thank you, Mr. Chairman, members of the House District Committee, I certainly appreciate this opportunity to appear before you to discuss D.C. Act 4-69, Sexual Assault Reform Act of 1981. Let me just point out, Mr. Chairman, I listened to the dialog and opening statements, and I would like to suggest in very strong terms that this committee ought to follow the three guidelines which you suggested, not in just considering this legislation but in any legislation which comes before this committee.

Obviously, if I had my way about it, we would not be sitting here, the committee would not exist, the District of Columbia citizens who are human beings like the Members of Congress and the residents of Kentucky, California, or Illinois—there is no difference in our blood, no difference in our feeling and thirst for freedom—would have full home rule. But under these circumstances we don't have it, so therefore we have to participate in this process, and I certainly appreciate the committee Chair and the members of the committee on such short notice moving very quickly in this area.

CRITERIA FOR CONGRESSIONAL VETO

Mr. Chairman, the questions are three. First, has the city exceeded the powers granted to it under the Home Rule Act? By everybody's examination, by everybody's analysis, the answer to this question, as I will point out later in my statement, is that the District clearly has not exceeded the powers granted to it under the Home Rule Act, an unequivocal no. The District, the Council and the Mayor, who represent several hundred thousand citizens of our town, has not exceeded the powers granted to it under the Home Rule Act. I think that criteria ought to be looked at very carefully and very closely, and one would conclude it has not happened.

Second, does it appear that the city has clearly violated a constitutional principle, the constitutional act? Ordinarily, constitutional questions are considered by the courts, not by legislatures. They think about it as they make laws. They try to be correct in their analysis of the act. They ask the opinion of the Corporation Counsel, the Attorney General or the legal counsel, but the final determinant in our system of law is clearly the courts. But, on the other hand, it is our reading, the Corporation Counsel's reading, my own analysis, the 13 members of the city council and their own counsel, that this law does not appear to violate any constitutional principle which the District has violated in enacting D.C. Act 4-69.

The third yardstick and the third criterion, is the Federal interest substantially affected? Mr. Chairman, let me repeat that again, and put emphasis on the word "substantially affected." I think that is a very key word. Is the Federal interest substantially affected by

this act. As I would point out later, the Congress of the United States gave the District responsibility for revision of its criminal laws. It did not say that you could do some and not others.

LAW REVISION COMMISSION

Finally, after 48 months, it gave the District complete responsibility to revise any and all sections of the criminal law. Not only did the Congress do that, the Senate Subcommittee on Government Efficiency and the District of Columbia and the House District Subcommittee on the Judiciary carefully considered whether they wanted to enact a revised criminal code for the District when they reviewed the recommendations of the Law Revision Commission in 1978.

FEDERAL INTEREST

Mr. Chairman and members of the committee, it was at that point that the Congress could reserve to itself the right to revise those laws. It chose not to do that. Congress decided to refer the matter for local determination. I think that is important to note also, that the Congress consciously decided, the Senate and the House, to give this matter to those of us elected by local people, and so I think that the Federal interest is not substantially interfered with here. The criminal laws of the District of Columbia affect crimes and actions which occur inside of the District of Columbia, not in New York, not in Connecticut, not in California, but in the District of Columbia, and I think that is important.

Without getting into the substance of the act itself, and reading it, obviously legislators and mayors don't often agree on every comma, every paragraph, every sentence, every statement or every principle in that particular act, but given the law, and given the law revision efforts in the several States with respect to sex laws, the District's proposal is not unique.

I would urge all of us, if you are interested, to observe and look at the laws of the other States, and you will find that a number of things that have been proposed here are already in practice in the various States or are being considered at this very moment.

Also, Mr. Chairman and members of the committee, from a practical point of view, as we know, the U.S. attorneys still prosecute local felony offenses. It is our view that this act will have no adverse impact on our law enforcement activities. I would point out that the bill was developed in consultation with the U.S. Attorney for the District of Columbia as well as the members of the Law Revision Commission, who were appointed by Members of the Congress.

Again, Mr. Chairman and members of the committee, let me point out that the District of Columbia only has 5 of the 15 members of the Law Revision Commission, and the Congress has the other 10, which means that if the Congress Members want to influence the direction of these deliberations, it seems to me that they should try to do that at that point in time with the membership of the commission.

COUNCIL OF THE DISTRICT OF COLUMBIA

Also, Mr. Chairman, I am not going to read my entire statement about whether or not the Council of the District of Columbia has the authority, because I think it is clear, but let me just indicate that the council was very deliberative in its efforts.

It followed its own rules. It followed its own procedures, and after the 24 months had moved to 48 months, the council took the Law Revision Commission's work not only in this area but in a number of other areas. They did good work and they had a series of hearings, which means that every citizen of the District of Columbia could participate. There were eight such hearings in each of the eight wards of our city, starting January 10, 1980.

These hearings were held both in the day and in the evening for the convenience of all of our citizens. It seems to me that is the forum where these issues should have been debated. That is a forum where the morality and the politics and the rightness or wrongness, the goodness or the badness of this proposed law should have been debated, at that forum.

Also let me point out that there is nothing to prohibit a Member of Congress from even participating in that process, if he or she feels so strongly about a matter. As our own Congressman indicated on a number of occasions, he has participated, as our Congressman and also as a citizen, in these processes, and he has given his personal opinion, his personal views, about what he thinks the council ought to do or not do, and that is the forum where these matters ought to be debated.

Once the council has acted, and acted properly and acted legally, it acted in a lawful manner—it had two readings on this matter as with any other act passed by the council.

It seems to me, Mr. Chairman and members of the committee, that all of us who are elected have our antennas up. We sort of try to stay in touch and in tune with our constituents, and I believe very strongly that if the majority of the members of the council felt that the majority of the members of the city were opposed to this direction, they would have been sensitive, they would have been understanding, and that has happened to me in several instances, and I give you one example.

I persuaded the council to pass a gasoline tax, and obviously that was passed, but the great majority of our citizens said, "Mr. Mayor, you were wrong. We don't like that. More importantly, though, your mathematics weren't quite right, because we are going to Maryland to buy gas." I kept my antenna up. I pulled it down and sent a repeal of that gasoline tax over to the council, and they had their antennas up and they agreed. So you can rest assured that we are sensitive to our constituents, the morality of issues, the legality of issues, rightness or wrongness of the issues.

It seems to me that once that decision has been made, this committee certainly ought to carry out its constitutional responsibility whether one likes it or not. In the final analysis, this committee should vote no on that resolution, because on all three counts there has been no substantial documentation. There has been no clear-cut evidence that this bill violated the home rule charter, that it is

unconstitutional, that it violates or interferes substantially with the Federal interest.

Also, Mr. Chairman, let me say I can understand how some people who don't live here and don't do much business in the District want to use this issue to carry on other agendas, and I certainly appreciate the committee's decision not to allow people to sue this forum to carry on other agenda.

Also, Mr. Chairman and members of the committee, there are some of our citizens who themselves have asked that this committee vote a disapproval resolution. Let me add that those citizens are in the minority. They certainly have a right to come and go where they want to, but they are in the minority.

I believe very strongly that the great majority of our citizens support, first of all, the integrity of home rule. That is the issue, the integrity of home rule, but more importantly, I believe the great majority of our citizens support the major provisions of this bill, and therefore I would urge this committee to vote no.

I would urge our good friend from Kentucky—certainly he has been a friend of ours throughout my electoral life in the District—to reconsider his position based on the home rule test. And I would urge our good friend from Virginia—who comes from an area of another good friend of mine, Mayor Marsh—to reconsider his position based on these three criteria only.

I think each of us has our own moral feeling about things, our own moral judgment about it, but this is not the place for that. We are legislators, you are legislators and I am a member of the executive branch of the District Government, and that is our role today as legislators, have these three questions been answered substantially affirmatively as to what has happened.

I think we have done that. Thank you, very, very much.

[Mayor Barry's prepared statement follows:]

TESTIMONY OF HON. MARION S. BARRY, JR., MAYOR OF THE DISTRICT OF COLUMBIA,
ACCOMPANIED BY JUDITH W. ROGERS, CORPORATION COUNSEL, D.C.

Mr. Chairman, I appreciate the opportunity to appear before you to discuss D.C. Act 4-69, Sexual Assault Reform Act of 1981. Traditionally, in considering District of Columbia Acts, this Committee has focused on three major questions:

First, has the City exceeded the powers granted to it under the Home Rule Act? The answer to this question, as I will point out later in my statement, is that the District clearly has not exceeded the powers granted to it under the Home Rule Act.

Second, does it appear that the City has clearly violated a constitutional principle? There does not appear to be any constitutional principle which the District has violated in enacting D.C. Act 4-69.

Third, is the federal interest substantially affected? As I will point out later, the Congress of the United States gave the District responsibility for revision of its criminal laws. The Senate Subcommittee on Government Efficiency and the District of Columbia and the House District Subcommittee on the Judiciary carefully considered whether they wanted to enact a revised criminal code for the District when they reviewed the recommendations of the Law Revision Commission in 1978. They decided to refer the matter for local determination. Given the laws and the law revision efforts in the several states with respect to sex laws, the District's proposal is not unique. In fact, it is similar to the laws of many states. As a practical matter, I do not see the Sexual Assault Reform Act of 1981 as having an adverse impact on our law enforcement activities and would point out that the bill was developed in consultation with the United States Attorney for the District of Columbia as well as the members of the Law Revision Commission who were appointed by the members of Congress.

Let me turn now to the question of whether the Council of the District of Columbia had the authority to enact D.C. Act 4-69. There is no doubt about the Council's

authority to enact the Sexual Assault Reform Act of 1981, approved July 21, 1981. Indeed, legislative history reveals that the District followed Congressional expectations in approving D.C. Act 4-69.

When the Self-Government and Government Reorganization Act of 1973 was adopted by the Congress on December 24, 1973,¹ it contained section 602(a)(9) which prohibited the Council from enacting:

"Any act, resolution, or rule with respect to any provision of title 23 of the District of Columbia Code (relating to criminal procedure), or with respect to any provision codified in title 22 or 24 of the District of Columbia Code (relating to crimes and treatment of prisoners), during the twenty-four full calendar months immediately following the day on which the members of the Council first elected pursuant to this Act take office."

Subsequently, Congress changed the "twenty-four" months to "forty-eight" months and added a prohibition, during that time, on enacting any act, resolution, or rule "with respect to any criminal offense pertaining to articles subject to regulation under chapter 32 of title 22 of the District of Columbia Code."²

Legislative history of the original version of section 602(a)(9) leaves no doubt that Congress intended to maintain complete control over the District's criminal laws for only a very limited period of time, and that during that time the Congress would seek to revise the District's criminal code. The Committee of the Conference wrote:

"The Conference Committee agreed to transfer authority to the Council to make changes in titles 22, 23, and 24 of the District of Columbia Code, effective January 2, 1977. After that date, changes in titles 22, 23 and 24 by the Council shall be subject to a Congressional veto by either House of Congress within 30 legislative days. The expedited procedure provided in section 604 shall apply to changes in titles 22, 23, and 24. It is the intention of the conferees that their respective legislative committees will seek to revise the District of Columbia Criminal Code prior to the effective date of the transfer authority referred to."³

And the then Chairman of the House Committee on the District of Columbia, in reporting on the conference report stated:

"Congress retains authority over the District of Columbia criminal laws until January 2, 1977. During this period I shall actively support the revision of the D.C. Criminal Code. After this time such authority shall be vested in the D.C. Council and any Council changes shall be subject to veto by either House for 30 legislative days."⁴

After the 1976 change in section 602(a)(9) of the Self-Government Act, the Corporation Counsel, District of Columbia issued an opinion which stated:

"As of January 3, 1979 the Council had the authority to enact acts with respect to titles 22, 23, or 24 of the D.C. Code."⁵

Thus, since 1979 the Council clearly has had the authority to enact criminal laws for the District.

It is important to note that instead of revising the District's criminal code itself as it originally intended to do, the Congress established the District of Columbia Law Revision Commission in 1974,⁶ and among other duties, assigned it the task of giving "special consideration to the examination of the common law and statutes relating to the criminal law in the District of Columbia, and all relevant judicial decisions, for the purpose of discovering defects and anachronisms in the law relating to the criminal law in the District of Columbia and recommending needed reforms."⁷ On March 7, 1978 Stephen I. Danzansky, Chairman of the District of Columbia Law Revision Commission transmitted to the Congress "a new basic criminal code for the Nation's Capital."⁸ Included in that code was Chapter 6, "Sexual Assault Offenses."

Both the House and the Senate held extensive hearings on the new Basic Criminal Code for the District of Columbia.⁹ Several months after these hearings concluded

¹ 93-198, 87 Stat. 774.

² Public Law 94-402, 90 Stat. 1220, Sept. 7, 1976.

³ Joint Explanation of the Committee of Conference, Home Rule for the District of Columbia 1973-74, Background and Legislative History, Chapter V, Dec. 31, 1974, pp. 3013-14.

⁴ *Id.*, p. 3054.

⁵ See 2 Op. C.C.D.C. 043 (1977).

⁶ Public Law 93-379, 88 Stat. 480, Aug. 21, 1974.

⁷ Section 3 of the District of Columbia Law Revision Commission Act, D.C. Code sec. 49-402(a) (Supp. V, 1978).

⁸ New Basic Criminal Code For the District of Columbia, House of Representatives, 95th Cong., 2d sess., Mar. 7, 1978, Serial No. S-6.

⁹ See D.C. Criminal Code Revisions, Hearings Before the Subcommittee on the Judiciary, Committee on the District of Columbia, House of Representatives, Feb. 9, Nov. 16, 17, 29, Dec. 14, 17,

ed the Chairman of the Senate Subcommittee on Governmental Efficiency and the Chairman of the House District Subcommittee on the Judiciary sent a joint letter to the Chairman of the Committee on the Judiciary, Council of the District of Columbia. The letter which transmitted the joint recommendations of the Senate and House committees, stated in part:

In the spirit of home rule, we are delighted to begin the process of transferring jurisdiction of the proposed criminal code to the City Council so that they can complete the task of codification by adding the essential ingredient of their knowledge of the District of Columbia."¹⁰

Thus, the Congress considered final revision of the District's criminal code to be a matter most appropriately addressed by the District Government.

Accordingly, in response to the transmittal from Congress, the Committee on the Judiciary of the Council commenced a series of eight public hearings, in each ward of the District of Columbia, on January 10, 1980 for the purpose of examining the D.C. Law Revision Commission's proposed code. These hearings, which were held both during the day and in the evening, extended to April 1980, and resulted in careful examination of the proposed code, including Chapter 6 which served as the model for D.C. Act 4-69. In fact, D.C. Act 4-69 contains many of the provisions set forth in Chapter 6 of the Law Revision Commission's New Basic Criminal Code, and follows that Code's general approach by focusing on three basic kinds of conduct: sexual assaults, unlawful sexual acts, and unlawful sexual contacts.¹¹ It should be noted, also, that in March 1981 two days of public hearings were sponsored by the Council on several criminal bills, including the sexual assault bill.

It is obvious then, Mr. Chairman, that the Council not only had the authority to enact D.C. Act 4-69, but in enacting D.C. Act 4-69 the Council followed the expectations of Congress by incorporating into the Act many of the recommendations of the District of Columbia Law Revision Commission. Furthermore, it also seems obvious to me that by transmitting its report on the Law Revision Commission's proposed code to the Council of the District of Columbia, the Congress viewed the District's criminal code as a matter most appropriately handled by the District government (just as criminal codes and laws are enacted and amended by municipalities and states throughout the union) rather than by the Federal government.

The CHAIRMAN. Mr. Mayor, I thank you for your opening remarks. I would now recognize Ms. Rogers for any further comments and then we will go to questions of the committee.

Ms. ROGERS. I have no statement, Mr. Chairman. Thank you.

The CHAIRMAN. The gentleman from Connecticut. The gentleman from the District of Columbia.

Mr. FAUNTROY. I simply want to commend the Mayor for placing the issue in clear and sharp focus and for the actions of the Mayor and the City Council on the principle of home rule.

The CHAIRMAN. Does that conclude the remarks of the gentleman?

Mr. FAUNTROY. It does. Thank you, Mr. Chairman.

The CHAIRMAN. The gentleman from Virginia.

FEDERAL INTEREST

Mr. BLILEY. Mr. Mayor, I appreciate your appearance with us today, but wouldn't you say that this city, which is our Capital, which we hope to be a shining example of a place to welcome thousands and thousands of people, both foreign diplomats, their staff personnel, and indeed citizens from all over the world, that laws

1977, 95th Cong., 1st sess., Serial No. 95-1; Apr. 25, 27 and May 2, 9, 1978, 95th Cong., 2d sess., Serial No. 95-17. Revised Basic Criminal Code for the District of Columbia, Hearings Before the Subcommittee of Governmental Efficiency and the District of Columbia of the Committee on Governmental Affairs, U.S. Senate, 95th Cong., 2d sess., May 3, 4, 19 and June 20, 1978.

¹⁰ See Dec. 5, 1978 letter in New Basic Criminal Code for the District of Columbia, Joint Recommendations of the House District Subcommittee on Judiciary and the Senate Subcommittee on Governmental Efficiency and the District of Columbia, 95th Cong., 2d sess., Serial No. S-9, Dec. 5, 1978, pp. v-vi.

¹¹ See New Basic Code for the District of Columbia, *op. cit.*, pp. 22-24, and pp. 127-143.

affecting something as important as this do have a substantial Federal interest, that we do have an interest in it, to see that they are reflective of what we believe in the United States, and I don't believe this act is.

Mayor BARRY. Congressman Bliley, I would agree that certainly the District of Columbia is unique in the sense that it is not only the home for over 700,000 local citizens. It is our Nation's Capital, and it is the international capital of the world. But as we examine other countries, there are 116-odd countries which have their capitals in countries where they are located, in Paris, in London, and others, you will find that as local laws go, the local people, the local legislatures, the city councils and others have complete jurisdiction over what happens.

Also, Congressman, the other thing which disturbs me about that process is that the citizens of the District of Columbia in our taxation, in our revenues, we pay 80 percent of the freight, and it seems to me that we are not unlike anybody else then. We are paying our way. We ought to be able to have our say, and quite frankly, I don't think that the people from Virginia or New York are going to be negatively influenced by this law. It basically applies to the conduct of local citizens by and large.

You are not going to have an influx, I don't believe, of a lot of citizens coming in carrying on activities that may be criminal in nature.

MORALS

I believe very strongly that your value system starts at home. It extends to the church or the synagogue, and that is where I make my witness as to what I believe is right and wrong. I try to teach young people that is where you start out, that laws themselves don't enhance, they don't stop some conduct that I would consider personally not moral, immoral or not in keeping with the tone that I like, but not this forum here.

STATE LAWS

I don't believe that the citizens of the country, of the United States, are going to be substantially or barely affected by this law, because a significant number of them come from States and cities and counties where the laws are more permissive than this one, and so if they came here, where they are living more stringently, they would either be inconsistent or they would be out of tune with something that is happening in their own State. Forty States have started reforming their sexual assault laws, and that is what I think is important.

INCEST

Let me also indicate one other point that the Congressman from Kentucky made about incest. That has not been repealed, just for the record. That is still a criminal law, a criminal offense punishable by 12 years in jail. So, again, I don't think this is doing any great damage. If I did, I wouldn't be sitting here defending it, because anything which affects the Nation adversely certainly is

going to affect our own citizens, and I would never advocate anything which is going to negatively affect our own citizens.

Mr. FAUNTROY. Will the gentleman yield?

Mr. BLILEY. I will be glad to yield to my colleague.

STATE LAWS

Mr. FAUNTROY. I think I do understand your concern that Federal interests may not be protected by this act of our locally elected government, but is the gentleman saying that other States of the Union which do not have laws on adultery and fornication ought then to be required by this Congress to adopt such laws in the Federal interest?

Mr. BLILEY. No; they are not the Capital of the United States, and this is, and we are charged by the Constitution, and it was set up that way, for the sole purpose of being the Capital. Therefore it is a national city.

Mr. FAUNTROY. So you would not advise the State of Kentucky to—

Mr. BLILEY. I wouldn't be so presumptuous as to advise the sovereign Commonwealth of Kentucky to do anything of a local nature.

Mr. FAUNTROY. I just wanted to get the record straight on that.

Mr. BLILEY. I yield back the balance of my time, Mr. Chairman.

The CHAIRMAN. The gentleman has yielded back the balance of his time. The gentleman from Kentucky.

Mr. MAZZOLI. Thank you, Mr. Chairman.

INCEST

I would like to pursue, Mr. Mayor, the part about the incest because I am concerned about that. You say that, indeed, laws have not been abolished about incest. Let me read to you what has been circulated by our staff, for whatever that is worth. They have apparently analyzed this. Section 6 says—and I might quote what they have given to us, that is, unlawful sexual acts with a ward “normally is a crime punishable by up to 8 years of imprisonment.”

As I read my staff's description of this, section 6 prohibits a parent, relative, or guardian from engaging in sexual activity with a child under age 18.

Now, if I read the English language correctly, that means, therefore, that a parent, relative, or guardian could engage in sexual activity with a child over the age of 18. May I ask Ms. Rogers?

Ms. ROGERS. Mr. Chairman, if I may, Congressman Mazzoli, section 1901, title 22, which is the chapter in the District of Columbia's criminal code on incest, remains a part of the District's criminal law even if this act were to become effective.

All right, what section 6 is doing is to expand the criminal activities with respect to those who are in that type of relationship, and indeed that is one of the provisions in this bill that is viewed as an important expansion of the area of criminal activity.

Section 1901 does not cover this, so rather than being a contraction it is an expansion in the area which I think is of concern to you.

Mr. MAZZOLI. I can't quite understand that, ma'am. If you would proceed further, I don't understand, I have not looked at the D.C. Code specifically to find the section that you refer to, but all I can refer to is what is before this committee to vote on approval or disapproval of. This is a bill which without so far as I know, reference back to this statute, prohibits a parent, relative or guardian from engaging in sexual activity with a child under age 18. Again, the converse of that is that you can do so if it is over 18.

If a person does do that, then could not a lawyer say, "Look, my client is off the hook." What would you say as a prosecuting lawyer?

Ms. ROGERS. No, with all due respect, Mr. Mazzoli, I think that the U.S. attorney's testimony before the city council made it clear that he would still have the option to prosecute in that case under section 1901, and charge incest. This bill in no way by implication—

Mr. MAZZOLI. How does this expand then? What is the current law? Without adoption of this D.C. bill, what can the prosecutor do?

Ms. ROGERS. Under section 1901 it is a situation where you do not have the criminal activity arising out of as it says here, "By threatening to exercise his or her custodial authority to affect the victim adversely."

That is not covered now under the present law in 1901.

Mr. MAZZOLI. So you have expanded it to include a person who has responsibility for that person. You have gone beyond parent to guardian.

Ms. ROGERS. That is correct.

Mr. MAZZOLI. All right. Currently under the law it is the parent only.

Ms. ROGERS. That is correct.

Mr. MAZZOLI. A guardian would not be accused of incest, is that the case? Under current D.C. law you can have incest?

Ms. ROGERS. No, Mr. Mazzoli. Under section 1901, and if there is a copy of the Code available for the Congressman to look at, I think he will see, it says now, and this remains the law of the District of Columbia:

If any person in the District related to another person within and not including the fourth degree of consanguinity, computed according to the rules of the Roman or civil law, shall marry or cohabit with or have sexual intercourse with * * *

That does not cover someone who is not related in that degree but is merely a custodian. Section 6 would make it a crime if you were the custodian and you engaged in sexual activity.

Mr. MAZZOLI. If I read this correctly, the current law, 1901, doesn't set any age limit, so what this law does do is say anybody over 18 who either is related in fourth degree of consanguinity or is a ward is off the hook as far as incest.

Ms. ROGERS. No, I think that, if I may suggest, and we can submit something for the record on this if that would be helpful, I don't think there is any disagreement between the U.S. attorney's office and the District of Columbia Government on its interpretation of the powers of the U.S. attorney to prosecute under section

1901 for incest. Rather, this bill would give him additional authority in the custodial situation, where there is no relationship——

Mr. MAZZOLI. Ma'am, please, I appreciate all that, and you certainly have run the District's legal affairs with distinction over the years that I have worked with the committee. But I mean I see an age limit in here that doesn't appear in the basic law. With respect I would suggest that any prosecutor who seeks to bring a charge of incest, whether in the fourth degree of consanguinity or as to a ward in guardian relationship, if the dependent is over the age of 18, the prosecutor would not be able to successfully prosecute that case.

Also, Mr. Mayor, you suggested that the District of Columbia, more or less, is following suit rather than in the vanguard of changing sexual abuse laws and what have you.

STATE LAWS

I am just curious. I see in the staff work that was supplied to us a kind of listing that shows some 40 States, and the Criminal Code penalties related to adultery, fornication and sodomy. I am curious as to whether or not all the other States are in the same situation regarding incest.

Ms. ROGERS. If I may, Mr. Mayor, Congressman Mazzoli, I think that one of the key matters here, and it may go to some of Congressman Bliley's concerns as well, as you are aware, when the Law Revision Commission first submitted its basic Code Revision proposals to both the House and Senate, there were a number of proposals in there with respect to repeal letters, including the ones which I think are of concern to this committee today, as well as a reform of the sentencing structure.

There was basic concern expressed when the City Council was considering the reform of the criminal laws with respect to what should happen to sentencing. Again, I would only——

Mr. MAZZOLI. Ma'am, please, if you will excuse me, because I am using my time here.

I am just curious if the analysis reviewed incest laws of the other 40 States, or are you aware of just what the other 40 States are doing on incest?

Ms. ROGERS. There is no change in the penalty for incest in the District of Columbia criminal laws in the bill that is pending before this committee.

Mr. MAZZOLI. Again, I guess we just have a difference of opinion. Having read section 22-3002, which the gentleman from Washington just handed me, I just see this as a problem. I think a prosecutor would have an impossible case to make.

TEACHER AND PUPIL

I would ask just one further question, and that has to do with section 22-3002 of the Code which would be repealed if this bill passes. That section, 22-3002, prohibits consensual sexual conduct "by a male teacher with a female student who is between the ages of 16 and 21."

Now, if I understand correctly, this would mean that a teacher, male or female, could have sexual relations consensually with an individual between the ages of 16 and 20 or anyone over 16 and that then would not be prohibited or sanctionable.

Ms. ROGERS. That is correct, Mr. Mazzoli.

Mr. MAZZOLI. In view of some articles which I have read, where teachers, male teachers particularly, but perhaps female as well, have the power of life and death over students who need grades, about ages 16 to 17, and sometimes students who are in college, do you think this is wise or appropriate in connection with sexual abuse laws?

LAW REVISION COMMISSION

Ms. ROGERS. I will defer by answering it as to the wisdom, if I may, but I would point out that it was in the recommendation of the Law Revision Commission, and as the Mayor pointed out, that Commission was——

Mr. MAZZOLI. Let me ask you this: Did the Law Revision Commission recommend going from 16 to 12 on the age of consent too?

Ms. ROGERS. I will check, Mr. Chairman, but the District of Columbia statute that is before you now makes no change in the age of consent.

Mr. MAZZOLI. I understand that. I didn't ask that question, ma'am. I asked whether it was that same Law Revision Commission that made the recommendation to go from 16 to 12. If it is the same one that made that recommendation and that made this recommendation too, in a sense, decriminalize sexual conduct between a teacher and his student or her student, then I have some concern about the Law Revision Commission.

I thank you. I yield back my time.

Mayor BARRY. Mr. Chairman, let me just add here in terms of the dialog, which I certainly appreciate, and there is no disrespect for Mr. Mazzoli because he is our friend, but clearly in that case, again this forum is probably not the forum to debate the merits or nonmerits of this law, because I realize how busy Congress people are with the affairs of state and their congressional districts, but all these questions have been debated, studied and looked at very, very clearly, and I think that is the proper place for them.

The CHAIRMAN. I thank the gentleman.

Mr. Gray.

Mr. GRAY. Thank you, Mr. Chairman.

INCEST

I would like to pick up again on the point made by my colleague from Kentucky, Mr. Mazzoli. I, too, am disturbed and concerned by some of the things that I have heard and read about the Sexual Assault Reform Act. I would like to get a clarification.

Are you saying, Ms. Rogers, that section 6 actually expands the laws with regard to incest to cover people who previously would

not have been covered, particularly those with guardian responsibilities?

Was that your response essentially to Mr. Mazzoli?

Ms. ROGERS. Yes, it was, Congressman.

Mr. GRAY. And, therefore, if you are a guardian or have responsibility through court action for someone, therefore, it would not be incest by definition?

Ms. ROGERS. If this bill were to become law; that is correct.

Mr. GRAY. But currently it wouldn't be covered?

Ms. ROGERS. That is correct, it would not be prosecutable.

Mr. GRAY. In other words, if I became the guardian of someone who is 16 years of age, a legal guardian, right now you are saying that your law doesn't cover that?

Ms. ROGERS. That is correct.

Mr. GRAY. And, therefore, what this is is an expansion. Could you give us any idea as to why the age of 18 was selected?

Ms. ROGERS. Eighteen in the District of Columbia is the age of majority. A person who is 18 or over is considered in our statute as an adult, to be an adult.

Mr. GRAY. Are there any other places in the country where that criteria is used?

Ms. ROGERS. Where 18 is the age of majority? Oh, yes. We would be happy to supply that for the record.

Mr. GRAY. Would you say the majority of codes in America?

Ms. ROGERS. I believe so; that is correct.

Mr. GRAY. So actually what section 6 does is cover a little loophole where if I were the guardian of someone, not related by blood in any way, shape or form, I could not take sexual advantage of her?

Ms. ROGERS. That is correct. Also, if I might point to section 7 of the bill, which makes a further expansion of people who are either inmates or patients, and in that relationship, where there was sexual activity, under this law that would now be prosecutable as a criminal offense, and it is not under current statute.

Mayor BARRY. Let me expand on that again, because again we tend sometimes to look at one or two sections of a proposed act. That is a very important section itself. We have had situations where counselors and others who were guardians of people who had mental problems, we have had situations where people were guards or other inmates who would sexually assault another inmate or ones who were mentally incompetent.

This law now clearly covers that area, which we think ought to be covered, and there are some other areas in here that are very, very protective of the rights of human beings.

I just wanted to add that further part.

Mr. GRAY. Let me ask a question. Under current law, if I were a guardian of someone who is not related to me whatsoever, and I had sexual relations with them, what would happen to me under the current law? One, if it was forced; second, if there was consent?

Ms. ROGERS. I think that is the key point. In prosecuting now under current law, the problem is whether there was consent. If there was any type of consent, the prosecution is practically impossible.

Mr. GRAY. So, in other words, if I were the guardian of a 16-year-old young lady, and had sexual relations with her, and there was some proof of consent, nothing could happen to me under law?

Ms. ROGERS. That is correct; and I think the experience in the Office of the U.S. Attorney has been that because you are talking about such serious offenses under current law, the burden on the Government in terms of showing nonconsent is quite high, and the problem that the District has is where you have people in a subordinate role to another adult, where there is no relationship, it may often be in their best interests to get along by going along, and yet it is clear that that was not consented to, and there is no way that criminal prosecution can proceed under current law in those circumstances.

Mr. GRAY. Isn't that the history really, the last statement, the history of many incestuous relations that take place, and people in law enforcement never find out about them because of that desire to go along to get along, and to survive a very bad immoral kind of situation?

One other question about this particular section. Is the age of 18 selected not only because of majority, but could it have any implications for, let's say, freedom of action for individuals?

Let's say for some reason I became a guardian, perhaps if I were a little bit younger, 25, let's say, a guardian of someone who is 14, and let's say we are not related at all by any blood ties whatsoever, and when that person becomes 19, we decide we want to get married.

Does this law provide that kind of freedom? And if you raise the age of the law, wouldn't that deny that freedom?

Ms. ROGERS. Yes; I think you are correct. I want to be sure I understand your question. There would be nothing to prohibit that adult at the point of 18 of making that decision, 18 or 19 years old, in your hypothetical. They would have all of the freedom to exercise the rights of an adult, absent any other mental defect or condition.

Mayor BARRY. As I understand your question, would the answer be, Ms. Rogers, that you would be free at age 18 to marry?

Mr. GRAY. Eighteen and one day, let's say.

Ms. ROGERS. You would be correct.

Mr. McKINNEY. Would the gentleman yield for just a moment?

Mr. GRAY. Yes.

AGE OF CONSENT

Mr. McKINNEY. When Congressman Ratchford and I were in the Connecticut House, the age of consent was based on the age of 21. When we changed the age of majority to 18 all those laws automatically changed to 18 and it became 18 and a day or what have you.

I suppose lawyers could decide how old you were on the date of your birth, and that was just taken for granted and nothing was ever changed to take any of those back up to 21. It just became the law of the State that everything dropped from 21 to 18.

The only discussion that has ever been made in my State to change that is over drinking, and that has always failed.

Mr. GRAY. I am glad that you clarified that. I wasn't sure of the direction. I happen to be a minister by background and training, and I was very disturbed and concerned about that, as Mr. Mazzoli was concerned, but certainly I would not want to have a loophole in the law that did not cover guardians and people who have responsibility, and thus there would not be the opportunity for prosecution.

TEACHER AND PUPIL

Could you go back and give me some clarification on the other question that Mr. Mazzoli raised, which I am concerned about, too, which is the relationship between teacher to student, and the cutoff age of 16 years. Why was that adopted? What was the thinking there?

Ms. ROGERS. Congressman Gray, that was one of the recommendations of the Law Revision Commission, that section 3002 of current law, seduction by a teacher, be repealed. Under this act, if it becomes effective, a student who is 16 or 17 years old, as Congressman Mazzoli's hypothetical question pointed out, a teacher who sexually molested that youngster would not be prosecutable under the District of Columbia law.

Mr. GRAY. A teacher?

Ms. ROGERS. Yes.

Mr. GRAY. Who had sexual relations with a student 16 and a day?

Ms. ROGERS. Or 17.

Mr. GRAY. All right, currently could not be prosecuted?

Ms. ROGERS. Currently can be. There is a section in the Code that is styled seduction by a teacher.

Mr. GRAY. That assumes consent or nonconsent?

Ms. ROGERS. Under either situation. The problem is where the student appears to consent. Under current law the teacher can still be prosecuted.

Mayor BARRY. Let me make a differentiation. As I understand it, there is a difference between nonconsensual and consensual. It seems to me that if it is forceful, then it is forcible rape.

Ms. ROGERS. That is correct. I think Congressman Gray's question is getting to the point that we were previously discussing.

Mr. GRAY. What I am trying to get at is what happens with a student 16 and a day who consents to relations with the teacher. Under this reform, what happens?

Ms. ROGERS. Under the Act before the committee, that teacher would not be subject to prosecution for seduction of a 16 or 17-year-old who consents.

Mr. GRAY. And under the former?

Ms. ROGERS. Under current statute?

Mr. GRAY. Under current statute.

Ms. ROGERS. That teacher would be subject to prosecution.

Mr. GRAY. How do you define student-teacher relationship? Does it mean that if I am the teacher of a class, that student must be in my class or just in the school?

Ms. ROGERS. If I may, the way the current law reads, it says:

Any male person over 21 years of age who is superintendent, tutor or teacher in any public or private school, seminary or other institution, or instructor of any female in any branch of instruction who has sexual intercourse with any female under 21 years of age and not under 16 years of age with her consent while under his instruction during the term of his engagement as superintendent, tutor or teacher, shall be imprisoned for not less than one year nor more than ten.

Mr. GRAY. So she would have to be under my direct instruction?

Ms. ROGERS. Yes.

Mayor BARRY. Let me point out we don't have exact statistics. I was just asking the lawyers. It appears that in the last 10 years there has probably been less than a dozen prosecutions under the present statute. That does not mean we should repeal it just because of that fact, but apparently the thinking may have been since this has not been a serious problem from a prosecutorial point of view, it may be one from a moral interpersonal relationship that may go on in a school, I suspect the thinking, Congressman, was that since the record doesn't demonstrate any overt problem of any magnitude, recognizing that one could be a problem, that that might have been part of the thinking.

Mr. GRAY. How do you respond, and this is my last question, Mr. Chairman, to the point that was raised by my colleague, Mr. Mazoli, that there is abnormal pressure in that kind of a situation, which could easily develop. How do you differentiate that situation from, let's say, the normal workday place, where someone happens to be on the staff, and also feels those same kinds of pressures to please the supervisor, the boss?

How do you make any distinction between that? I noticed your earlier comment, that such training, virtue, and morality starts somewhere else?

Mayor BARRY. That is my overview. On the other hand, Congressman Gray, I have had occasions to read reports where law professors and their students are engaging in sexual activity because of the instructional relationship; that is college professors.

I don't think age is a factor which in some instances encourages or discourages. I think it is the situation, and I don't think that this one section, concerning some of the questions and concerns about it, is weighty enough to bring the whole bill down.

Obviously, if I were to go through section by section of the bill, there are a number of questions I could raise about my own concerns. I look at it in the whole as opposed to every part.

I can understand the concern about a 17-year-old or 16-year-old or an 18-year-old, but I firmly believe, maybe I am just idealistic, maybe I have a different value system, I firmly believe that a young lady who has a certain set of values, regardless of what pressures come, whether overt or whether they are grades or non-grades, they won't do it.

I know situations in the D.C. Government where supervisors have tried to intimidate women.

Mr. MCKINNEY. Would the gentleman be kind enough to yield again?

Mr. GRAY. I will be glad to yield. I guess my point is that if there is pressure at the school level, what differentiates that and distinguishes that pressure from pressure in the normal workplace?

Mayor BARRY. None.

Mr. GRAY. To achieve or to be promoted, it seems to me those pressures exist, and I don't know whether law is the way you are going to change that or not.

The only question I had about that is the age of 18, majority, rather than 16.

I yield to the gentleman.

Mayor BARRY. Mr. Congressman, I would agree. I understand your direction. I would agree that that analogy as to the workplace or any other place in terms of the pressures that are there, I happen to agree with that.

Mr. GRAY. I yield to the gentleman.

AGE OF CONSENT

Mr. McKINNEY. I share the gentleman's problem as to the age of 16. I really don't know why it was done. It seems to me that it is much cleaner and clearer if you just say 18 across the board. I would say I am a nonlawyer. I have problems with the idea of consent. I guess what you are really saying is consent at the time is probably a crime you are never going to hear about.

Consent denied after the fact, this is the layman's point of view, is something we are going to hear about, and it is clearly punishable, of course there being proof, and I think this exists in both the workplace and in the school situation and always has. But I would have to assume that after the fact—particularly in school, once the reward or the implication of reward for an act has passed, and the necessity, say, and my friend from Kentucky's point that the mark has been given, the A instead of the D—that after the fact that consent can be brought to the court and to the police as in fact a threatening, harassing motion which would be punishable under the Code.

I don't know if you would like to disagree with that, but I am assuming child A, who is 16, and consents to sexual molestation, to say get a mark, and has then gotten that mark on the public record, could then go to the police and say, "I was harassed and threatened. To pass this course I had to have sexual relations with my teacher and I didn't want to and I told other people about it at the time and they are willing to admit that it happened and I want you to prosecute him."

Is that true?

Ms. ROGERS. I think that is correct, Mr. McKinney. I think the problem becomes simply a matter of prosecutorial and the likelihood of conviction in that circumstance. You do hear about disciplinary action within the educational system, and you also have civil suits, and I think one other point might be a distinction which the bill offers, which may not be satisfactory, is a distinction between those people who are in custody in the sense of a residential setting as distinct from someone who goes to the school during the day and goes home at night.

As the Mayor suggested, the workplace where you have youngsters would offer the same problem, where you have at least the appearance of consent at the time.

Mr. GRAY. That is exactly what I was getting at. What happens to a young lady, not to be sexist, or a young man, who happens to

be a secretary at age 18? They are out of high school. They are in the workplace.

The CHAIRMAN. Would the gentleman yield for just a moment?

Mr. GRAY. There are the same pressures there as the gentleman from Kentucky pointed out, to get rewards, and maybe by doing something this will bring about reward.

If those pressures are there, it seems to me I don't understand the concern. Those pressures are going to be there throughout life, and where do we form the value system that stands up to those pressures, whether you are 18 and in Roosevelt High School or Cardozo High School, or whether you are 18 working on Capitol Hill as a clerk. Those same pressures are there.

This is the point I was trying to make, to try to get the assessment as to why the Law Review Commission made that recommendation.

Thank you for the clarification. I yield back my time to the Chair.

The CHAIRMAN. The Chair was going to inquire.

In an effort to try to be fair here, there is an extra amount of use of time going over the same ground, it seems to me.

The gentleman from Maryland, Mr. Barnes.

Mr. BARNES. Thank you, Mr. Chairman.

CRITERIA FOR CONGRESSIONAL VETO

As one who spent a number of years practicing law here in the District of Columbia, and as a volunteer lawyer who represented a few clients in cases like this one, I am very tempted to enter into this rewriting of the law that the city has passed, but I think I will forgo that, Mr. Chairman, because I think your analysis of what our responsibility is this morning is the correct one, and I think you reached the correct conclusion as to how the committee should respond to the decision we have to make this morning, and I yield back my time.

The CHAIRMAN. I thank the gentleman.

The gentleman from California, Mr. Dymally.

FEDERAL INTEREST

Mr. DYMALLY. Mr. Chairman, of all the arguments advanced this morning, the only one that touches very slightly is Mr. Bliley's, and he advances the reason or logic that there is a Federal interest, and my question of Mr. Bliley, is there any legal evidence for your argument in the statute, or is this just one based on reason or logic or perception?

Mr. BLILEY. I hope that there never would be, but these people who do come here as visitors could be involved with this statute, and I hope they wouldn't.

Mr. DYMALLY. But there is no basis for your argument in the statute. Do you derive your support for your argument in the legal statute?

Mr. BLILEY. I just derive it as the fact that the District receives from the Federal Government over \$1 billion toward their budget in the course of a year. We do have a Federal interest. We do have people coming here. It is our Nation's Capital and I think we

should take an interest in the laws as they would affect potentially those visitors who come here.

Mr. DYMALLY. So your argument is based on interest. Then, it seems to me, if we follow it to its logical conclusion you should have an interest in the Federal Government paying taxes to the District of Columbia for the space it uses.

Mr. BLILEY. If we paid taxes at the same rates the citizens did and had no other payments to the District, the District would lose money.

Mr. DYMALLY. I have not heard legal argument for the questions that were pursued today. All these arguments are based on some dislike of the present statute. I don't like the parking regulations around my house either, but I don't know that that is a Federal interest, and if I should involve the committee's time in asking the District of Columbia to change the parking laws.

What we are dealing with here is whether the District has complied with all the laws governing the District of Columbia granted by Congress, and not whether we like it or not, and so it is not a question of like or dislike.

It is a question of legality, and I haven't found a legal argument to support the unhappiness that some of the members have expressed.

FEDERAL PAYMENT

Mayor BARRY. Mr. Chairman, may I just make sure. It is always educational to campaign with me about this money so it won't get past anybody. The District of Columbia citizens pay to the Federal Government \$1.4 billion in personal income taxes. We receive back from the Federal Government \$300 million Federal payment and about \$370 million in Federal grants, which means we are giving the U.S. Government over \$700 million of our money.

I think the record ought to clearly state that, and I don't mind giving it, but you ought to know we are giving it, you are not giving it to us.

The CHAIRMAN. Are there any further questions of the witnesses?

If not, on behalf of myself and members of the committee, the Chair would like to thank you, Mr. Mayor and Ms. Rogers, for your presentation and your contribution to these proceedings.

Mayor BARRY. Thank you, Mr. Chairman.

The CHAIRMAN. Our next witness is the Honorable Arrington Dixon, The Chairperson of the District of Columbia City Council.

STATEMENT OF HON. ARRINGTON DIXON, CHAIRMAN, DISTRICT OF COLUMBIA CITY COUNCIL

Mr. DIXON. Mr. Chairman, as has been indicated I would like to submit my extended comments for the record.

The CHAIRMAN. Without objection, it is so ordered.

Mr. DIXON. It is clear that the Mayor has expressed our home rule concern about this issue, and I have no further comment at this time.

The CHAIRMAN. I thank the gentleman.

Are there any questions? The gentleman from Kentucky? The gentleman from Virginia?

I would like to thank you very much, Mr. Chairman, for your presentation.

Mr. DIXON. I thank the chairman.

Mr. MAZZOLI. It sometimes pays to be second in line.

The CHAIRMAN. Your written testimony will appear as part of these proceedings. We thank you very much.

Mr. DIXON. Thank you.

[Text of statement referred to follows:]

STATEMENT BY ARRINGTON DIXON, CHAIRMAN, COUNCIL OF THE DISTRICT OF COLUMBIA

Mr. Chairman and members of the House District Committee. I appreciate the opportunity to make my views known on the resolution to disapprove the District of Columbia Sexual Assault Reform Act of 1981. I urge you not to approve this resolution in the name of home rule and the right of district citizens, as Americans, to make laws that affect them.

The District of Columbia Sexual Assault Reform Act was approved by the Council of the District of Columbia on July 14, 1981. The general purpose of the legislation is to "modernize and consolidate the District of Columbia's law regarding sexual assault, while repealing other law prescribing sexual behaviors which have fallen into disuse."

While attention has been focused on those aspects of the act that would liberalize the law, I would like to point out that many parts of the bill actually make existing law more stringent by broadening the concept of rape by expanding the forms of compulsion, by consolidating sexually prohibited conduct into one set of laws which could penalize any sexual attack upon any person regardless of the sex of either person, and by expanding the protection against sexual abuse of hitherto unprotected classes of people.

But the point of this testimony is not what the law would do, but how it became enacted. This bill was not hastily conceived and thoughtlessly approved, but was instead the result of a long process that allowed for considerable comment by citizens and legal experts.

The sexual assault legislation was first considered by the District of Columbia Law Revision Commission. It was introduced in the Council on February 10, 1981 by Councilman David Clarke and was cosponsored by Councilmembers Wilhelmina Rolark, Polly Shackleton, and Hilda Mason. Notice of the proposed legislation and notice of public hearings appeared on February 20th in the District of Columbia register. Public hearings were held on March 12th and 13th with twenty (20) witnesses testifying. The bill was marked up in the Committee on the Judiciary on June 3, 1981.

This bill went before the Council in late June and was the subject of considerable controversy in the media and by the public. As a result, certain portions of the bill were modified by the Council to make it more in consonance with the values of the citizens of the District.

The bill that was approved by the Council is not a radical one. Virtually every State in the Union has adopted similar legislation. Of more direct relevance is the fact that this bill does not affect the Federal interest, nor does it impact on the international community in the Nation's Capital.

Passage of this law is totally within the mandate of the Council of the District of Columbia as expressed by the Home Rule Act, the purpose of which was to relieve Congress from legislating on essentially local district matters. I, therefore, ask you to not approve the resolution that is before you, and to let stand the will of district citizens as expressed by their legislators.

Thank you.

The CHAIRMAN. Mr. Danzansky, the Chairperson of the District of Columbia Law Revision Commission testimony will become part of the permanent written record.

[The prepared statement of Mr. Danzansky follows:]

STATEMENT OF STEPHEN I. DANZANSKY ON HOUSE RESOLUTION No. 208

Mr. Chairman: Thank you for the opportunity to submit this statement concerning House Resolution No. 208, which would disapprove D.C. Act 4-69, the District of Columbia Sexual Assault Reform Act of 1981.

I. The Law Revision Commission

The Law Revision Commission was established by Congress in 1974 to examine the laws of the District of Columbia on a comprehensive basis, to recommend changes and reforms for the purpose of remedying defects and anachronisms, and thereby "to bring the law relating to the District of Columbia . . . into harmony with modern conditions." D.C. Code, § 49-402(a). Congress expressly directed the Commission to "give special consideration to the examination of the common law and statutes relating to the criminal law of the District of Columbia." *Id.* Consequently, the Commission devoted its full time and energies during its first four years, after it was funded in 1976, to the development of a criminal code.

The composition of the Commission ensured a skillful and impartial examination of the criminal laws and represented the views of a broad spectrum of the community. Its members were appointed by federal and local authorities, including the President, the Speaker of the House, the President pro tempore of the Senate, the Minority Leader of the House, the Minority Leader of the Senate, the Council of the District of Columbia, the Mayor, the D.C. Courts, the D.C. Bar, the Public Defender and the Corporation Counsel. I was first appointed by President Ford in 1974. Since 1976, the membership of the Commission has included the United States Attorney for the District of Columbia and the Corporation Counsel.

II. The Basic Criminal Code

The criminal laws of the District have not been revised in a comprehensive manner since 1901. They are disorganized, with related offenses scattered throughout different chapters of Title 22 of the D.C. Code; they use archaic language; and, in many cases, they fail to take into account changing concepts and approaches taken by other states, the majority of which have undertaken significant revisions of their criminal laws.

In June, 1976, the Commission organized itself into task forces to enable it to consider a number of aspects of the criminal laws simultaneously, with monthly deliberations by the full Commission. Members of law faculties of each accredited university in the District were retained to report to the Commission on every aspect of criminal law reform, especially recent efforts in the Congress (S. 1 and S. 1437) and nationwide.

LAW REVISION COMMISSION MEETINGS

After 83 meetings of the Commission and its task forces, involving approximately 3,000 Commissioner-hours of time, the Commission completed its tentative proposal for the Basic Criminal Code in October, 1977. This proposal was the subject of unique joint hearings, held in November, 1977, by the Subcommittee on the Judiciary of the House Committee on the District of Columbia, the Committee on the Judiciary of the Council of the District of Columbia, and the Commission. The Commission thereafter obtained the views of then Chief Judge Harold H. Greene of the Superior Court, the views of prisoners at Lorton Reformatory, and numerous written submissions by various organizations and individuals.

On the basis of this testimony and submissions, the Commissioners filed 171 amendments to the tentative proposal and received a resolution of the Council itself suggesting 40 additional amendments.¹ During 16 meetings held in January and February of 1978 (requiring approximately 870 Commissioner-hours), the Commission considered and debated each of these amendments and suggestions. The final proposal was a result of these lengthy and thorough deliberations. The Commission then participated in hearings held by the relevant House and Senate Subcommittees on April 25, 1978 and May 3, 1978 to consider the proposal. On December 5, 1978, the Subcommittee on the Judiciary of the House District of Columbia Committee and the Subcommittee on Governmental Efficiency and the District of Columbia of the Senate Governmental Affairs Committee issued a joint recommendation of suggested changes to the proposal.

¹ Of the total amendments filed and submitted, 27 pertained to the sexual assault provisions of the Basic Criminal Code.

COUNCIL OF DISTRICT OF COLUMBIA

On January 2, 1979, pursuant to section 602(a)(9) of the District of Columbia Self-Government and Governmental Reorganization Act, as amended by Pub. L. 94-402, the Council assumed the authority to amend and repeal provisions of the criminal code of the District. As a consequence, the Commission's proposed Basic Criminal Code was introduced in the Council in November 1979. During the early months of 1980, a series of eight public hearings by the Committee on the Judiciary of the Council on this bill were held at various locations throughout the city.

Although the Basic Criminal Code was not enacted during the Council period ending December, 1980, various parts of it were reintroduced in 1981. The Sexual Assault Reform Act of 1981, which was introduced by Councilmember David A. Clarke, and eventually passed by the Council and signed by the Mayor, is substantially patterned after Chapter 6 of the Commission's proposal, entitled "Sexual Assault Offenses."

In developing the Basic Criminal Code, the Commission did not proceed on the assumption that it was compelled to propose a wholesale revision of existing criminal law. Instead, the problems and advantages of each section of the present compilation of criminal laws were analyzed by the Commission's staff, its consultants, its task forces, and the full Commission. The Commission also relied heavily on work done by the American Law Institute, particularly the Model Penal Code, the Brown Commission, and the various drafts of the Federal Criminal Code, then and still pending in the Congress, in order to avoid duplication of efforts and to benefit from the viewpoints of the drafters of these documents.

III. Sexual assault offenses

Chapter 6 of the Commission's proposal, entitled "Sexual Assault Offenses," provides the first comprehensive revision of these laws since the enactment of the 1901 Code. It consolidates in a single chapter sexual offenses which are currently scattered over seven chapters of Title 22 of the D.C. Code. It clarifies the scope of certain offenses which had become the subject of differing judicial interpretations and constitutional challenges. It harmonizes offenses that were enacted at different times and cast in different language. It fills the gaps in current law, which leaves a large number of persons with inadequate protection against sexual assaults. And it provides equal punishment for similar offenses.

The Commission's proposal punishes all sexual acts or contacts imposed upon others by force or fraud, or sexual acts or contacts imposed upon a person who is a member of a class deserving special protection, such as children, wards, and inmates or patients in institutions. Offenses are defined in terms of the degree of force, deception or coercion involved, or the relationship between the parties. In order to avoid challenges based on denial of equal protection of the law, all references to gender are eliminated.

RAPE

The most serious offense under this proposal, Sexual Assault in the First Degree, punishes a forcible act upon any person, male or female, by another person. It is broader than the current crime of rape, which simply punishes one who "has carnal knowledge of a female forcibly and against her will or . . . carnally knows and abuses a female child under sixteen years of age." D.C. Code, §22-2801. In order to eliminate the confusion with respect to the element of consent in prosecutions under the current rape statute, Sexual Assault in the First Degree applies to one who sexually assaults another not only by actual force, but also by threatening, or placing the victim in reasonable fear of, death, abduction, or bodily injury, or by substantially impairing the victim's ability to appraise or control his or her conduct. In response to testimony by many women's groups concerning the rape of wives by husbands, this offense does not provide immunity to the spouse of a victim of Sexual Assault in the First Degree.

The proposal also creates the offense of Sexual Assault in the Second Degree, which severely punishes one who commits a sexual act against a person who is incapable of resisting or withholding consent to the sexual act. In addition, Chapter 6 creates offenses specially designed to protect persons who are at a disadvantage to resist sexual advances—namely, children, wards, and inmates or patients in institutions. The use of custodial, legal, or other authority over such persons to make them engage in sexual activity is clearly forbidden. These new offenses are a considerable improvement over current law, which provides inadequate deterrence to such conduct.

In addition to these sexual act offenses, the proposal contains provisions punishing sexual contact in circumstances which would constitute a sexual act had penetration occurred. Definitions of sexual "act" and sexual "contact" describe explicitly the proscribed conduct.

STATE LAWS

As part of its proposal, the Law Revision Commission recommended the elimination of certain consensual sexual offenses (fornication, adultery, seduction, sodomy). This decision was based upon a thorough examination of similar revisions in other states, legislation (S. 1437) then before the Senate Judiciary Committee, and careful consideration of the views of the United States Attorney and Corporation Counsel. The Commission determined that the arrest, prosecution, and imprisonment of persons for such offenses, which did not involve harm to other than consenting individuals, was an inefficient use of scarce criminal justice resources, which could better be used to detect and prosecute more serious offenses. Moreover, the Commission determined from information provided by authorities that the number of prosecutions for such offenses had declined to such a level that for all intents and purposes the spirit of the law was repealed. Retaining such offenses as unenforced criminal laws could have the adverse consequence of breeding disrespect for the law.

In conclusion, the proposals of the Commission, which were adopted by the Council in part, were the result of years of diligent research and deliberation by representatives of a broad spectrum of the community, both federal and local. The viewpoints of every segment of the community were heard and carefully considered on a number of formal occasions. The product of the Commission's efforts was a sincere attempt to "bring the laws relating to the District . . . into harmony with modern conditions" in accordance with our statutory mandate.

The CHAIRMAN. We have received written testimony from our distinguished colleague, Mr. Crane, the author of H. Res. 208.

That concludes the hearing part of these proceedings, and without objection, we will now move to the markup of H. Res. 208.

DISPOSITION OF HOUSE RESOLUTION 208

The CHAIRMAN. The Chair will call up House Resolution 208 for consideration.

Is there any discussion at this time? The Chair has a few remarks that he would like to make.

I think the gentleman from California, Mr. Dymally, went directly to the issue when he said that the only challenge to the legislation before us is Mr. Bliley who raised the question of the Federal interest, so, Mr. Dymally, it seems to me, has adhered to the criterion established by this committee to determine what our actions ought to be in these matters.

Now I would like to speak briefly to that. Mr. Bliley's statement is embodied in the Constitution or at least he implies that it is embodied in the Constitution, that the sole purpose of the District of Columbia is to be the capital of the United States.

HOME RULE

Now, one problem with that is that when the overwhelming majority of the House of Representatives and the Senate enacted into law a statute commonly referred to as the Home Rule Act in 1973, the Congress of the United States was stating that it is not indeed the sole purpose.

The Congress of the United States saw a duality in this situation. It saw clearly that the District of Columbia on the one hand acted as the capital of the United States, but, on the other hand, was a community of local citizens that should in no way be disenfran-

chised from participating in the democratic process, so, it seems to me, that we cannot advance the argument that the sole purpose of the District of Columbia is to act as the capital of the United States.

The Home Rule Act recognizes that there is a community of people here who have a local interest, and the Home Rule Act, whether one agrees or disagrees with every provision, was an effort at that time, 1973, to give some balance to the notion of the Federal interest as against the local interest, so, indeed, we have placed into statute the duality of that situation, so I would disagree with my colleague that that is the sole purpose.

We have a duality here, so in that duality, we have a right then to make judgments about whether or not actions taken violate the Federal interest.

FEDERAL INTEREST

Mr. Dymally raised the question of whether or not there is any legal provision in the act that challenges the Federal interest. No one has responded with a legal argument to that question. If it is conjecture on our part, the Chair would like to offer his conjecture, and that is that this matter, the bill under consideration in no way violates the Home Rule Act, because the City Council certainly has the right at this juncture to revise the Criminal Code.

I am not an attorney, but I certainly do not believe that there has been any violation of the Constitution and, indeed, none of my colleagues have offered that argument.

Finally, as I said, to the question of the Federal interest, I think only Mr. Bliley, who is in support of the resolution before us, has raised the question of the Federal interest properly.

It just seems to me that one can argue persuasively against that particular argument.

Finally, the Chair would like to point out that I have listened diligently to the questions put to the Mayor and to the Corporation Counsel by the gentleman from Virginia, the gentleman from Connecticut, and the gentleman from Pennsylvania, and I think that the questioning clearly indicates that this is a wholly inadequate and totally inappropriate forum to address the specifics of this issue.

Clearly we are in no way here prepared to go to the substantive questions before us, and I think the questions that attempt to go to the substantive questions only bear the pragmatic reality that we are incompetent as a forum at this particular juncture to address that matter.

We are not privy to the town meetings, and I think all of us would agree that the essence of democracy is embodied in the notion that you bring government closer and closer and closer to the people.

Mr. MAZZOLI. Mr. Chairman, I hadn't intended to speak.

The CHAIRMAN. In the regular order the Chair is now assuming his time. The gentleman would certainly be recognized.

I think that no one can argue that the Chair in any way stops the gentleman from his presentation and I would certainly yield to

the gentleman at the appropriate time, because I think that this gentleman leans over backward to be fair.

I want to make my statement and then I stand on that, sink or swim.

I think that this is a wholly inappropriate forum for this discussion of the substantive question, and, again, I go back to the fact that there needs to be some clear guidelines as we move through these matters, and there should not be a knee jerk response based on the emotion or controversy or the political climate at the moment.

CRITERIA FOR CONGRESSIONAL VETO

Our guidelines ought to be able to guide us through any moment any period any situation, and I think the three points that we have laid out as a precedent for this committee's action, it seems to me has not been significantly challenged.

There have been no arguments made that indicate that there is any gross weakness in the criteria that we have established, and so the Chair will continue to believe that our proper role here in applying these criteria would leave the majority of this committee, I would hope to vote no and preserve the integrity of the Nation of the separation of the Federal and local interest and I yield to my colleague.

Mr. MAZZOLI. Thank you very much and I appreciate my colleagues forbearance. I didn't mean to interrupt and I wouldn't except that I think the gentleman may have said some things about the competency of this panel.

I think our panel is competent. I would defer to him in his very eloquent analysis in what he has brought up today. I certainly recognize that the arguments made by my colleagues here are very sound.

I have no argument, but I certainly don't want the record left with the impression that there is an incompetent panel. I think that we are very competent and I think serving with the gentleman for 10 years has certainly proved that out.

Secondly, with respect to the gentleman again, I don't think this was a knee jerk or an emotional session.

I think it was very factual and very candid. I asked question and other gentlemen asked questions and I don't think we did so emotionally.

The Mayor is here and I think he understands those questions were asked lovingly in the effort to try to find good information and not in an effort to embarrass or cause any problems.

Those are the only two points I make. I think we are very competent and; second, I was very proud of the debate.

The CHAIRMAN. The Chair has no problems with that. No. 1 when I used the term "competent" it did not go to the members here. The incredible genius of this body is so extraordinary that I certainly would not challenge it.

When I used the term "competent" it didn't go to the high IQ of all of us on this panel. What I was suggesting was that this is not the appropriate forum, that it is not a competent forum for discussion.

I don't think this is a competent forum for us to discuss highly technical engineering matters at this particular juncture. We are not organized to do that, and so one could say the committee is not competent to deal with highly technical engineering matters, and that doesn't speak to all of our capabilities nor the capabilities of our staff. It just says are we capable to handle the particular questions at that time.

Finally, I would say I wasn't suggesting that anybody here was being knee-jerked. What I was saying was that our guidelines should be so clear that it removes the possibility of us knee-jerking in a situation.

That is what I was suggesting, not that these hearings were not highly dignified and very appropriate and stimulating, as a matter of fact.

The gentleman from Connecticut and then the gentleman from Pennsylvania and the gentleman from the District of Columbia.

CRITERIA FOR CONGRESSIONAL VETO

Mr. McKINNEY. Mr. Chairman, I would just like to pull something out of your remarks that I think is highly important, and that is that if we live up to the three criteria that you and I long ago said are important—has the city exceeded its authority; has the city clearly violated the Constitution; is the Federal interest abridged—we are, Mr. Chairman, and should take great comfort from the fact that under that guideline we do not have to enter into other issues that basically concern the citizens of this community, just as I would not want this Congress to enter into decisions that should be matters of the State of Connecticut.

I, for instance, right now have joined several of my colleagues in a bill which would stop the Federal Trade Commission from interfering within my State's own legally adjudicated fields.

I think those three criteria ought to be kept high on the list, so that the District of Columbia is not moved about and shaken by temporary political aberrations that appear to take over the U.S. Senate and the U.S. Congress at various different times.

I am afraid, Mr. Chairman, I am a little bit of a Draconian. I am here to represent my constituents, but not to slavishly follow their mood of the day. If their mood of the day should become unhappy enough with me, then they have a wonderful appearance of 2 years on the even years in November, and they can remove me for someone who will slavishly follow their whims of the moment.

My personal feelings on this subject have already been expressed in other forums, where I should express them, notably the Connecticut State Legislature in 1969. I have no intention of expressing them once more to tell the citizens of the District.

I have often told the mayor that if I retire from Congress or if I should and I ever register to vote in the District of Columbia they will hear plenty from me but until then I would like to say as little as possible.

The CHAIRMAN. I thank the gentleman.

The gentleman from the District of Columbia.

Mr. FAUNTROY. Mr. Chairman, I should just like to ask if you will entertain a unanimous consent request?

The CHAIRMAN. The gentleman will propound it.

Mr. FAUNTROY. The fact is that I think we have had a very useful hearing, and it has laid to rest at least one factual error that has been cleared up, namely, that with respect to incest this provision does not change the law but, indeed, it expands it to cover persons not now covered, who are engaged in guardian relationships, which guardian relationships are possible only to the age of 18, say in cases of incompetency, in which case the law would still cover it.

I would like unanimous consent to submit for the record at this point the fact-sheet prepared by the staff, which lays to rest several other matters of fiction with respect to what this bill does, and substituting the facts.

The CHAIRMAN. Without objection, it is so ordered.

[The factsheet appears on p. 3.]

The CHAIRMAN. The gentleman from Virginia.

Mr. BLILEY. Mr. Chairman, I don't want to delay this any longer but you mentioned my name in your remarks.

The CHAIRMAN. The gentleman is recognized.

Mr. BLILEY. I would like to say a couple of things. First, like you, I am not a lawyer. I was not here in 1973. The home rule charter, as I understand it, clearly reserves the right of Congress to exercise its constitutional authority to legislate on any matters involving the District, including the repeal of existing local acts, and I think that is the reason we are sitting here this morning.

I don't quarrel with the right of the District to revise its Criminal Code, but I only feel it went too far in this instance.

The CHAIRMAN. I thank the gentleman.

The gentleman from Connecticut?

The gentleman from Pennsylvania?

Mr. GRAY. Thank you, Mr. Chairman.

Let me just say along with some other colleagues that I am not a lawyer. I happen to be a Baptist minister, and I think that the Chair has been absolutely right, along with some of my other colleagues, in terms of what is the real issue in terms of constitutional legal questions.

INCEST

But I have had a concern about some of the misconceptions that have appeared in the media, particularly with regard to incest, and I think that they have been clarified here today as a result of the questions that dealt with that particular area. We have shown that at least in that instance, the revision of the Criminal Code has extended itself to make sure that rights of citizens are protected. And there is a legal remedy for those who transgress those rights, when there had not been one before.

HOME RULE

I simply want to say, before we go to the markup, that after today's session, I am even more convinced than I ever was before of the necessity of even more home rule so that the U.S. Congress can get out of the business of trying to make decisions for the District of Columbia, so that it will cease to be the last colony in the United

States that has taxation without representation. To use the argument that we provide Federal revenues to the city of the District overlooks the fact that we also provide those same revenues to every other city to some degree or another, and yet, we don't have that kind of involvement.

So as a result of today's hearing, we have clarification on some issues that had been clouded, misrepresented in the media. And then, second, I think it convinces me more of the necessity for home rule, and looking at these matters clearly as we have done so in the past as to the constitutionality and legal requirements.

Thank you, Mr. Chairman.

The CHAIRMAN. That concludes the remarks of the gentleman from Pennsylvania.

Mr. BARNES? Mr. Dymally? Are there any other members seeking additional recognition?

If not, the Chair will put the question. All those in favor of approving House Resolution 208, the resolution to disapprove the actions of the Council of the District of Columbia regarding the District of Columbia law 4-69, will vote aye. Those opposed will vote no.

The Clerk will call the roll.

The CLERK. Mr. Fauntroy?

Mr. FAUNTROY. No.

The CLERK. Mr. Mazzoli?

Mr. MAZZOLI. Aye.

The CLERK. Mr. Stark?

The CHAIRMAN. No by proxy.

The CLERK. Mr. Leland?

The CHAIRMAN. No by proxy.

The CLERK. Mr. Gray?

Mr. GRAY. No.

The CLERK. Mr. Barnes?

Mr. BARNES. No.

The CLERK. Mr. Dymally?

Mr. DYMALLY. No.

The CLERK. Mr. McKinney?

Mr. MCKINNEY. No.

The CLERK. Mr. Parris?

[No response.]

The CLERK. Mr. Bliley?

Mr. BLILEY. Aye.

The CLERK. Mrs. Holt?

Mr. BLILEY. Mrs. Holt votes aye by proxy.

The CLERK. Mr. Dellums?

The CHAIRMAN. The Chair votes no.

The CLERK. Mr. Chairman, the nays were eight, the ayes are three.

The CHAIRMAN. By a vote of eight nays and three ayes, the resolution House Resolution 208 does not pass.

Unless there is any further business to come before the full committee, the committee stands adjourned.

The committee will reassume its business.

The CHAIRMAN. The gentleman from Virginia.

Mr. BLILEY. I will be very brief.

In view of the fact that the committee report on H.R. 1807 took so long to prepare, and the fact that we are on a very tight timetable on this matter, I would like to inquire of the chairman when he thinks the report on House Resolution 208 will be presented to the House.

I am sure the chairman is aware that the Home Rule Act requires that we report on a resolution within 20 calendar days, and if we fail to report that there are sections which are incorporated in the rules of the House that refer to the methods of discharging the committee from further consideration, and I know the chairman and other members of the committee don't want the committee embarrassed.

The CHAIRMAN. The Chair will consult with counsel. The Chair is prepared to respond to the gentleman.

The Chair sees at this point no need to report the action of this committee, and the Chair would say if there are other Members of the House of Representatives who choose to discharge this committee from its responsibility and bring this matter to the floor of Congress, then they in their wisdom can do that, but it would seem to me that we have carried out our responsibility.

We have heard the testimony. We have deliberated. We have taken a vote, and by a majority vote we have seen fit to not report.

Mr. McKINNEY. Would the chairman yield?

The CHAIRMAN. I yield to my distinguished colleague.

Mr. McKINNEY. I would also say to my good friend from Virginia that historically this committee has never reported a negative action.

The CHAIRMAN. So that if there are other Members of the House that choose to do that then the Chair does not see that as an embarrassment but simply sees that as a further exercise of any Member's democratic rights as that person perceives them in the Home Rule Act, and that person or those persons are perfectly within their rights to go forward.

We have not reported any action beyond the action of this committee on any resolution of disapproval.

Mr. BLILEY. Thank you, Mr. Chairman.

The CHAIRMAN. I thank the gentleman.

The committee stands in adjournment.

[Whereupon, at 11:25 a.m., the committee was adjourned.]

[Subsequently, the following letters, statement and news articles were inserted for the record.]

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So the motion to table was rejected. The result of the vote was announced as above recorded.

□ 1145

The SPEAKER pro tempore (Mr. HOWARD). Pursuant to the provisions of section 604(e) of Public Law 93-198, the gentleman from Illinois (Mr. PHILIP M. CRANE) will be recognized for 30 minutes, and the gentleman from California (Mr. DELLUMS) will be recognized for 30 minutes, if the gentleman from California is opposed to the motion to discharge.

The Chair will inquire, is the gentleman from California (Mr. DELLUMS) opposed to the motion to discharge?

Mr. DELLUMS. Yes, I am, Mr. Speaker.

The SPEAKER pro tempore. The gentleman qualifies.

The Chair recognizes the gentleman from Illinois (Mr. PHILIP M. CRANE).

Mr. PHILIP M. CRANE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, based upon this last vote, it is apparent to me what the sense of this body is, and for that reason, since in the interest of expediting consideration of my motion we can get to other important business on this floor today, I would like to relinquish my time during this portion of the debate so as to be able to speed up the possibility of proceeding to actual consideration of the motion.

So with that, Mr. Speaker, I reserve the balance of my time.

The SPEAKER pro tempore. The Chair recognizes the gentleman from California (Mr. DELLUMS).

Mr. DELLUMS. Mr. Speaker, I yield myself such time as I may consume.

(Mr. DELLUMS asked and was given permission to revise and extend his remarks.)

Mr. DELLUMS. Mr. Speaker, let me remind my distinguished colleagues that the gentleman from Illinois (Mr. PHILIP M. CRANE) indicated just a moment ago that he wanted to dispense with this matter so that we as Members of Congress could get on with more important business.

I would suggest, Mr. Speaker, that there is no more important business than the defense of democratic procedure processed and adherence to the statutes that we establish. There is no greater responsibility than the responsibility that we have as Members of Congress to guarantee the franchise to millions of human beings.

Now, my distinguished colleague, the gentleman from Illinois, suggested that this body should remove from the District of Columbia responsibility for further consideration of this matter so that the House may work its will. In 1973, this body engaged in a significant discussion and in a significant debate dealing with the question of whether or not the District of Columbia was indeed solely the Capital of the United States or whether the District of Columbia simultaneously was

a community of human beings who lived in the District of Columbia and who have nothing to do with the Federal interests.

I would suggest, Mr. Speaker, that when the Congress of the United States enacted the District of Columbia Self-Government and Reorganization Act of 1973, euphemistically referred to as the Home Rule Act, the Congress of the United States indeed stated that there is both a Federal and a local interest in the District of Columbia. We gave unto the Council of the District of Columbia the responsibility to engage in the enactment of laws, and I would suggest that we cannot come down on the District of Columbia simply because we do not agree with the political posture of the City Council if indeed we believe in the franchise for the residents of the District of Columbia. We cannot have these people somewhere between independence and enfranchisement within the framework of the democratic process and in servitude on the other hand. In some way we have to clarify our posture in that regard.

The Committee on the District of Columbia is charged with the responsibility of acting upon all resolutions of disapproval. Over the course of the last several months and years we, as the members of the Committee on the District of Columbia, have evolved a set of experiences that have led us to establish criteria. The Committee on the District of Columbia has established criteria that we thought should be established that would allow us as members of the committee to be guided with justice and equity through the morass of resolutions of disapproval and to in turn attempt to guide this body, the full House, in these significant matters. It was our hope that, given the intent and the spirit of the Home Rule Act, we could establish the sundry criteria so that we could address any resolution of disapproval irrespective of the subject matter, and we came up with three criteria.

No. 1, is the act passed by the City Council violative of the Home Rule Act? Did the City Council exceed its authority granted to it by this body under the Home Rule Act of 1973? Not one member, including my distinguished colleague, the gentleman from Illinois, would argue that the City Council violated the Home Rule Act. So we strike that one.

The second criteria: Did the City Council, in the enactment of D.C. Act 4-69, violate the Constitution of the United States? Not one single colleague has argued that what the City Council did in enacting D.C. Act 4-69 violated the Constitution of the United States.

That, then, leads us to the third criteria, and that is this: Has the City Council in the enactment of D.C. Act 4-69 raised a Federal issue or obstructed the Federal interest?

This is an important discussion. In the debate on the Home Rule Act there was significant discussion with respect to the Federal interest on the one hand and the local interest on the other, and the committee, as Members of this body, tried diligently to define the dichotomy between the two. Only one member of the committee who supported the resolution of disapproval, my distinguished colleague, the gentleman from Virginia, suggested that this indeed did challenge Federal interests and was indeed an obstruction of the Federal interest.

So we asked the gentleman to expand upon his argument. The gentleman then used the Constitution of the United States to suggest that the sole purpose of the District of Columbia is to act as the Capital of the United States, and by virtue of that the gentleman suggested that an act enacted into law by the District of Columbia Council obstructed the Federal interest.

I take exception to that and would challenge it on its face. First of all, I would argue that when the Congress of the United States enacted the Home Rule Act of 1973, it came to grips intellectually, philosophically, and politically with the dichotomy between the local interest and the Federal interest. The overwhelming majority of this body said that there are several hundred thousand people who live in the District of Columbia outside the Federal enclave, who live lives on a daily basis as teeming millions of other Americans do throughout this country in tens of thousands of cities in the United States.

We accepted that. We said that there are people who live here, who have a local interest, and let us try as diligently as we can to separate those interests out.

So I would argue with my colleague, the gentleman from Virginia, that if in any way this act thwarted the Federal interest, it cannot be argued on legal grounds and no one has offered the argument that said, on page 2, line 27, paragraph 3, here is what we perceive to be clearly stated as a threat, violation, or obstruction of the Federal interest.

There has been no definition of the Federal interest except in rather broad and vague and general terms, and I would suggest to the Members again that when we enacted the Home Rule Act, we put some definition to it. We said that we accept the fact that there are people out there who are American citizens, who live within the framework of the free and democratic society, and who ought to no longer be disenfranchised.

But now they are engaged in a very controversial act. They have the audacity to engage in reforming the laws regarding sexual assault, so a number of my colleagues decided that we now must challenge the District of Columbia on this matter.

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But I am asking, when do we throw down democratic processes? I may disagree with many of the Members on this side of the aisle and many of my colleagues on our side of the aisle, but I will not violate nor challenge nor destroy the democratic processes that give us the right to offer our opinions.

The point I make is this: If you can challenge the District of Columbia government because you do not agree with the politics of something they enact, when do you come after Ron Dellums or any other Members because of the politics they espouse?

Democracy is a fragile thing. The District of Columbia enacted a gambling law. I am in the progressive wing of the body politic. If I had voted on a resolution of disapproval on the merits of the question of gambling, I would have opposed the District of Columbia government because my politics say that gambling is part of the capitalistic mystique that harms many poor people in this country by giving them the illusion that by spending a couple of dollars, tomorrow morning they could awaken with \$1 million. But I chose not to challenge them because more important than expressing my political view on the question of gambling was to express my profound support for the concept and the principles of democracy and freedom.

We cannot have these people in the District of Columbia being involuntary slaves or servants on one day and free citizens on the other at the whim of Members of Congress.

Now, we brought witnesses before our committee. They were not the same witnesses that the District of Columbia brought before its committee because we did not perceive the role of the U.S. Congress as supplanting the function of the District of Columbia government. These people went into every community in the District of Columbia and held hearings on this matter, and after those hearings they developed a piece of legislation that was unanimously enacted by a vote of 13-0.

Now, if the residents of the District of Columbia cannot appreciate or feel as strongly as a number of us may about the substantive aspects of the law, then they can do the same thing your constituents and my constituents can do when they do not like the stance we take; they can get rid of us.

But it is the height of hypocrisy, Mr. Speaker, when we set ourselves up as arrogant elitists and say that:

In some way we know democracy better than you do, in some way we as Members of Congress are the shining beacons of democracy, and you as the local City Council, duly elected by your constituents, are not charged with the same responsibilities and accountability as we are.

You cannot yesterday say, "I applaud home rule" and today say, "I take it back," unless you have established a set of criteria that moves you intelligently, reasonably, fairly, and within the framework of democratic

principles through the morass of stances.

Mr. Speaker, we all know that this is probably the most political body on the face of the Earth. Elected officials are perhaps the most creative political thinkers of all time. We take an issue and we take it 180 degrees in any direction we want. Politicians by definition are very creative thinkers. Politicians by definition are always looking over their shoulders. So here we find ourselves with a bill where everybody is looking over his shoulder.

And so am I—but not to see whether somebody is going on me to take my seat but whether or not the time is gaining on me when democratic processes go out the window.

I find it tragic, Mr. Speaker, and ludicrous that some of the most powerful flag-wavers who are Members of our body politic are the very first people to thwart the principles of democracy when they do not agree with a political stance. I may or may not agree with the stance taken by the City Council on a whole range of issues. That is not what is at stake here when we sit as Members of the Congress of the United States.

□ 1200

When we sit as Members of Congress of the United States we ought to be guided by wisdom. We should not be sitting here trying to be the city council of the District of Columbia. We should not.

Believe me, I would not let this matter die in a few minutes because if the committee is discharged I want the 10 hours to debate this question: 10 hours is a very short time to debate an abdication of democratic principles and procedures. One cannot do it in 10 or 15 minutes so that we can smoothly move the business of the Congress. There are 700,000 people outside this door whose lives are at stake based on how we define their freedom.

The Committee on the District of Columbia carried out its responsibilities. We carried out those responsibilities with integrity and dignity and honesty. We did not choose to hear yea and nay on the merit of the situation because when the Congress enacted the Home Rule Act it said Members of Congress generally, members of the District of Columbia Committee specifically, we do not choose to sit as the city council. We have enacted a law that lets people do that.

If you truly believe in democratic principles, then you have got to let that process go forward. Do not kill the process simply because of your political stance, because to kill democratic procedures is a massive blow. So I do not see this personality. I do not see this as simply a challenge to the committee structure. I mean, after all, the committee structure is a nebulous mechanism anyway.

But what I am exercised about is the caring about other human beings and whether or not we lie to people when

we enact laws and say you truly are a part of this country and you truly are part of the democratic process, except when you enact laws that are controversial so that we can engage in the dance of expedient politics and bring a local matter to national attention.

I think that it would be much more honest for my colleagues who do not believe that the District of Columbia Sexual Assault Reform Act is appropriate to write a Federal one and bring it to this floor and let us have at it on that basis. But let us not use this platform to take a local matter, which clearly challenges the principles of the Home Rule Act, and attempt to make it a national issue. If my colleague really is interested, Federal law can supersede local law and the gentleman can write a bill. He can write a bill.

We have had hearings and my distinguished colleague from Illinois (Mr. PHILIP M. CRANE) with all due respect, Mr. Speaker, chose not to appear. The gentleman was on Capitol Hill. The gentleman did not even submit written testimony before our committee. I saw the gentleman's testimony in a "Dear Colleague." But we held the hearings, we had discussions and we had debate. We heard from the people charged with the responsibility of letting us know whether the process had integrity, what was meant by it, and the law itself required that the Mayor of the District of Columbia report to us on all legislative matters within 30 days of enactment.

So we had the Mayor, the Chairperson of the District of Columbia, the Corporation Counsel, the Chairperson of the Law Revision Committee, and our distinguished colleague from Illinois. These were the relevant people to answer the question: "Did it violate the spirit or the intent of the Home Rule Act? Did it violate the Constitution or obstruct the Federal interests?"

The overwhelming response to all three of those questions was no. If the answer to any of those questions were yes then we have a different situation. So, it is not that we have attempted to close off debate. What we have said is we need to have some guidelines that move us through this morass so that at any moment, whether it is 20 years down the road, 20 months, 20 minutes, or 20 decades, that people can look back upon this moment and say this body stood for the principles of democracy.

That is why this gentleman is exercised. It is not about discharging the committee. This gentleman could care less. But there is a higher principle here.

So, I would conclude, Mr. Speaker, that I strongly disagree with my colleague from Illinois that we ought to dispense with this matter in a few moments to get on with other more important business, because there is no more important business than to ratify the principles of democracy.

There is no more important principle than the principle of saying that 600,000 or 700,000 people do indeed have the franchise within the framework of our formal Government. There is no higher responsibility, and it would seem to me frivolous in the extreme to assume that we could dispense with this matter in a few moments so that people could take their political stance, and then we could get on with other more convenient business.

I want to make it inconvenient because we need to discuss this matter, Mr. Speaker. I would suggest to all my colleagues who believe profoundly and deeply in democratic principles, you and I may not agree on the philosophical issues. I stand in the progressive wing of the body politic and I stand here without shame and without fear and without defense. Many of my colleagues stand in the right wing of the body politic. So be it. When we come together, let us have at it on the ideological issues, but let us not destroy the very process that allows you and I to debate the question.

What I am suggesting is that this resolution of disapproval indeed challenged the very process that we have established, that breathes life in the ideas of democracy. The residents of the District of Columbia are human beings, as we are, and if they do not like this bill they can recall the Members, they can replace the Members, just as they can replace any of us if they do not agree with the ideas we espouse. If my colleagues believe in that principle, then they ought to go forward.

We talk about messages being communicated around here. We always get on the floor and talk about sending messages. What message gets sent when we decide at any given moment that democracy is not convenient? Perhaps as a black human being I am sensitive to the fact that in too many instances the establishment exercises the laws when it is convenient and takes them back when it is not convenient.

Why is it that one person can stand up on this floor and offer a resolution to disengage a committee, discharge a committee from its responsibilities in this situation when not one person can discharge any other committee around here? When we enacted the Home Rule Act, a number of our more conservative colleagues who wanted to keep some control on the lives of the residents of the District of Columbia said we cannot give these local residents the right to rewrite the Criminal Code, I would say to my colleagues, gee-e-s, that is really freedom when you can rewrite the laws that govern your lives. So they have established an extraordinary provision that said that any time the District of Columbia enacts a law that affects the Criminal Code, one Member, one Member can get up and offer a resolution to discharge a committee.

Why did they do that? It was not for healthy reasons and my colleagues and I know that. I won't enunciate them and enumerate them because we all know exactly what those reasons are.

In the silence and solitude of our own conscience and mind we understand what that was all about. It was a quite reactionary posture and in my estimation thwarted the whole notion of the democratic process when one person in a body that is supposed to be a group-oriented body can get up and motion to discharge the actions of a committee. But they said no, we do not want this city, majority black, to have this kind of power, and one person can do it. But one person cannot discharge other committees, but only the District of Columbia because, in a half-hearted fashion maybe, we really did not mean home rule.

Maybe at this moment we really do not mean that we believe in democratic principles. What message do we send to other people in other nations at this critical juncture in our evolution when we say we do not care about these 600,000 or 700,000 people. They have the audacity to enact a law that we do not agree with. Therefore, we will challenge the processes.

I may agree with the gentleman from Illinois if we began to talk about the specifics. But I would argue diligently that that is not what is before us at this point. What should be before us in what is the appropriate role of the U.S. Congress, if we truly believe we should not be the City Council, and again I will conclude with the three points.

Keep this in mind throughout this debate, because the extent to which I can take it 10 hours I am taking it 10 hours. Did they thwart, violate, the Home Rule Act, violate the Constitution of the United States, obstruct the Federal interest? The answer to all three of those questions is no.

I think our committee acted appropriately and wisely and intelligently, and I would ask, Mr. Speaker, that the Members of this body reject the motion before us to discharge the committee.

I reserve the balance of my time.

Mr. PHILIP M. CRANE. Mr. Speaker, I yield such time as he may consume to my distinguished colleague from my home State of Illinois (Mr. McCLODY).

(Mr. McCLODY asked and was given permission to revise and extend his remarks.)

Mr. McCLODY. I want to commend my colleague from Illinois (Mr. PHILIP M. CRANE) for bringing this subject to the floor of the House today. Certainly there is nothing inconsistent with our Constitution.

As a matter of fact, the District of Columbia has had home rule before we enacted the District of Columbia Self-Government Act of 1973 and home rule has been withdrawn before.

I think we have an inherent responsibility constitutionally to grant to the District of Columbia, this Federal City, such degree of home rule as we may want to repose in its officials and to withdraw it if we choose.

Under the Home Rule Act, as a matter of fact, we have retained this legislative responsibility or this legislative authority to override actions of the city council. I think that by enacting the Sexual Assault Reform Act, the city council has offended the Congress. I think they have offended the American people by this action. And I think it is entirely consistent with our prerogatives that we should take up the resolution as urged by my colleague from Illinois (Mr. PHILIP M. CRANE) and we should approve his initiative overwhelmingly here today and I salute the gentleman for his diligent work in bringing this important issue to the House.

Mr. PHILIP M. CRANE. I thank my colleague for his gracious remarks.

I yield such time as he may consume to my distinguished colleague from Montana (Mr. MARLENEE).

(Mr. MARLENEE asked and was given permission to revise and extend his remarks.)

Mr. MARLENEE. Mr. Speaker, in the past 2 weeks a friend of mine visiting from Montana has been murdered, beaten to death in the area of one of Washington's better hotels. What kind of home rule is that?

In the past 2 weeks a staff member serving on the Interior Committee was murdered in his own home, knifed to death. What kind of home rule is that?

In the past 2 weeks a friend of mine from Montana was carrying out the garbage behind his own home and was mugged right behind his own home. What kind of home rule is that?

Since the first of the year a member of my staff had a knife held at his throat in his own home and was robbed of everything that he had in his own home.

I am mad and I am mad about crime. I hope the message goes home loud and clear to the District of Columbia: "Clean up, our act."

Mr. PHILIP M. CRANE. Mr. Speaker, I would be happy to yield 1 minute to the gentleman from Michigan (Mr. CONYERS).

Mr. CONYERS. I appreciate the gentleman yielding to me because I wanted to ask the angry Member walking off the floor, who I hope can hear me, to explain what in God's name this particular piece of legislation has to do with his very virulent opposition to crime being committed in the District of Columbia? If there is any rational connection at all I would love to hear him explain to me what this matter has to do with the crimes that he and I deplore.

The gentleman is not on the floor, so I thank the gentleman for yielding and return his remaining time.

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Mr. PHILIP M. CRANE. I thank the gentleman.

I would like to make just one additional comment, Mr. Speaker, and that is to correct a misimpression of the distinguished chairman of the District of Columbia Committee. I did, in fact, submit my testimony before that committee in writing and I have a copy of it here in the event the gentleman did not see that.

Mr. DELLUMS. Mr. Speaker, will the gentleman yield for a response?

Mr. PHILIP M. CRANE. Yes, I am happy to yield to the gentleman from California.

Mr. DELLUMS. Mr. Speaker, I certainly in no way attempted to impugn the integrity or credibility of the gentleman from Illinois. That is not my purpose. What I did was state fact.

I have just consulted with my staff and they have said they have not received, unless your staff dropped the ball somewhere, they still have not received official testimony, as I understand it, before our committee. I have four staff people here saying no, we have not received it.

We are not in the business of coming to the floor engaging in communicating fallacies. That is certainly not what we are about here. I think we can discuss the matter intelligently. I made a statement of fact. If the gentleman's intent was to do it, then I would strike the matter. But I am saying for the official Record, we have not received the gentleman's testimony.

Mr. PHILIP M. CRANE. All I can say is last Thursday, I believe it was, that testimony was delivered from my office.

□ 1215

If it was lost somewhere, I have an additional copy here. But I will save that for the time we get into debate.

Mr. Speaker, I reserve the balance of my time.

Mr. DELLUMS. Mr. Speaker, I yield such time as he may consume to the distinguished gentleman from Connecticut (Mr. McKINNEY).

(Mr. McKINNEY asked and was given permission to revise and extend his remarks.)

Mr. McKINNEY. Mr. Speaker, I would request of the gentleman from Illinois if I could use 5 minutes of his time, since we only have 8 minutes left on the other side.

Mr. PHILIP M. CRANE. Mr. Speaker, I am happy to yield that time to the gentleman from Connecticut.

Mr. McKINNEY. Mr. Speaker, I appreciate the gentleman's yielding me that additional time, and it is done in the same fairness with which I read the gentleman's "Dear Colleague," which I really would like to say I thought was a fair document of the gentleman's belief.

Having served on this committee since coming to Congress in 1971, and as the ranking minority member, I feel it is incumbent, obviously, upon me to

address this matter both procedurally and in its substantive aspects.

Many of my colleagues on both sides of this aisle have asked me why I would want this job—particularly when it costs me dearly in every election, and it looks like it is going to cost me even more dearly in the next one. I told then minority leader Gerald Ford that I wanted this job because I believed in the Constitution, I believed in the responsibility under the Constitution of people to bear arms, to defend their country, I believed in the duty of people to pay taxes to support their country, and that I saw at that time 800,000 Americans, with their citizens fighting in Vietnam, paying taxes into the U.S. Government with no ability to express even who the mayor of their city was going to be. We changed that.

I believe in my State that we believe that human beings, private American citizens, have the right under the Constitution of the United States to control their private lives without the interference of somebody who is not elected by them. We in Connecticut would greatly object if you came to our State and overturned the statute that you have now overturned, or seem to be about to overturn here today, and yet we have exactly the same laws. In fact, they have the same laws in almost every way in Alaska, California, Colorado, Connecticut, Delaware, Hawaii, Indiana, Iowa, Maine, Nebraska, Nevada, New Jersey, New Mexico, New York, North Dakota, Ohio, Oregon, Pennsylvania, South Dakota, Vermont, Washington, and Wyoming.

When I first joined the Committee on the District of Columbia there was no home rule. In short, Congress controlled anything and everything concerning the city of Washington. We decided whether or not an alley should be closed, we established and monitored programs, we determined the budget and the funding levels for all offices and departments. Washington was not a city, but a creature of Congress.

Not long after my arrival in Congress, however, things changed. In December of 1973, the President signed Public Law 93-198, commonly referred to as the District of Columbia Home Rule Act. It was not a complete severing of the ties between Congress and the Nation's Capital, but it was the first step in what all of us involved knew would be a lengthy transition which would eventually bring the city to the status of an independent municipality. There have been problems in this transition, just as there has been great progress.

Anticipating the inevitable difficulties confronting a fledgling local government, Congress reserved to itself the right to override local legislative actions. Since home rule, the Committee on the District of Columbia has been charged with the responsibility of reviewing legislation enacted by the

District of Columbia on behalf of the House of Representatives.

Accepting the principle of home rule as the law of the land, the committee sought to determine what should serve as guidelines for taking action to veto local legislation, paramount in this consideration was the fact that home rule for the District of Columbia was an extension of the principle that local governments should be allowed to make decisions on local matters of their citizens—essentially exactly the same right that I have heard supported by my colleagues on the Republican side of this aisle time after time after time: States rights. Get Uncle Sam out of my life.

As a result, three criteria were developed by the committee to use in all cases where we were resolving and approving or disapproving of City Council action:

Does the action of the city violate the Constitution? Does the action of the city exceed the authority granted in the Home Rule Act or other statute? Does the action of the city violate a clear Federal interest?

The answer to all of the above is "No."

To date, the committee has considered 10 resolutions of disapproval, including House Resolution 208. The subject matter has included gambling, statehood, revision of the sexual assault provisions of the criminal code, rent control, and the location of chanceries and embassies in the city of Washington. In all cases, the committee has been guided by the criteria I have just mentioned. Only once was it necessary to overturn legislation enacted by the city, because only once was it clearly demonstrated that one of the guidelines had been violated.

While I apologize for that stroll through history, I think it very important to make the record clear on one point. The subject matter of the city law which would be rejected by House Resolution 208 is controversial and emotional. But that has nothing to do with the procedures to be utilized in reviewing the legislation. The committee acted in a timely manner, held a hearing, and passed judgment on the resolution based on the established guidelines. Given that, I cannot understand how anyone can justifiably move to discharge the committee on this issue. The specifics of the issue should not and did not in any manner change the way the committee responded to the resolution of disapproval.

Having said that, I will go no further on procedure. I do not wish to chastise any Member for exercising his or her rights under the procedures of this body. Even though the Committee on the District of Columbia has acted in the usual manner on this resolution, the provisions of the Home Rule Act allow a Member to move to discharge. I respect that right, and I understand it because the shoe has been on the other foot.

In order to understand the reason for the motion to discharge, one is forced to look beyond procedure and examine the substance of the matter at hand, and it is here, Mr. Speaker, that there is emotion, opinion, and disagreement.

Some have alleged that the District of Columbia Sexual Assault Reform Act of 1981 was developed without adequate citizen participation and that it does not represent the consensus of the citizens of the city of Washington. I would like to stress that last phrase, because I think it is of extreme importance. We ought not be here to judge the provisions of this local legislation by our individual moral standards, or those of our constituency. This law will not affect our constituencies. It seems to me that having given the city of Washington the limited autonomy that we have, we have no business dictating moral standards, or for that matter any other standards, to the residents of the city. That is their decision and theirs alone. So the only yardstick by which to measure this legislation ought to be whether or not it reflects the wisdom of the residents of the city.

I am aware that the gentleman from Illinois has many petitions, but I think we should take a long look.

The impetus for this legislation is found in the recommendations of the District of Columbia Law Revision Commission. This Commission was established by Congress in 1974 to review the laws and statutes relating to the District of Columbia and recommended changes. The membership of the Commission consists of individuals appointed by the President, both Houses of Congress, the Mayor, the local courts, and the local unified bar. The recommendations of this body of highly qualified individuals led the City Council to begin its consideration of the legislation which House Resolution 208 seeks to disapprove.

In its deliberations, the City Council held public hearings throughout the city and received testimony from any and all interested parties. Additionally, the City Council held open committee meetings and ultimately approved by unanimous vote the matter in question today. Given the extent of the hearings and discussion on this issue, I find it hard to believe that the will of the residents is not represented in this legislation, despite petitions.

There has been great confusion, generated by reports in the media and by other ecumenical interests, about what this legislation would or would not do. Rather than removing penalties for many serious offenses, the District of Columbia Corporation Counsel testified under extensive questioning at committee hearings that in many cases, District of Columbia Act 4-69 sets more severe penalties for a broader range of offenses. The resulting statute would also be more in line with the comparable provisions of most

other States and the Model Penal Code of the American Law Institute. My own State of Connecticut dealt with this question in 1969, and the result was a statute that reflected the reality of life in the 20th century rather than the 19th century. In my opinion, District of Columbia Act 4-69 attempts to do the same thing, in a manner which a majority of the local residents perceive as correct.

Mr. Speaker, there is no basis for agreeing with a motion to discharge the Committee on the District of Columbia from consideration of House Resolution 208. Procedurally, the Committee on the District of Columbia has dealt with this matter in the prescribed manner and in a timely manner. Substantively, neither the Congress nor any individual Member has any business inflicting personal moral standards on the residents of the District of Columbia. I urge all Members to vote against any motion to discharge.

Mr. GRAY. Mr. Speaker, will the gentleman yield?

Mr. McKINNEY. I yield to the gentleman from Pennsylvania.

Mr. GRAY. Mr. Speaker, I would like to identify myself with the gentleman's remarks, and particularly one statement that the gentleman made with regard to many in this body who are now calling for local control and States rights. Here, at this particular juncture, many of those who are calling for local control are now saying, "We are against local control when it comes to the District of Columbia."

I think the gentleman from Connecticut (Mr. McKINNEY) has articulated that very clearly, and I want to agree with him 100 percent.

Mr. McKINNEY. Mr. Speaker, I am sure the gentleman, without being disrespectful, will remember another gentleman who said, "Let my people go."

Mr. WEISS. Mr. Speaker, will the gentleman yield?

Mr. McKINNEY. I yield to the gentleman from New York.

(Mr. WEISS asked and was given permission to revise and extend his remarks.)

Mr. WEISS. Mr. Speaker, I rise in opposition to the motion to discharge the Committee on the District of Columbia from further consideration of House Resolution 208, a resolution to veto the District of Columbia Sexual Assault Reform Act of 1981 (District of Columbia Act 4-69).

Support of this discharge motion is a violation of the integrity of the Home Rule Act. This act has received due consideration by the City Council and the District of Columbia Committee and has adhered to three principles set down by the Committee on the District of Columbia: It does not violate the Constitution, exceed authority granted in the Home Rule Act or other statutes, nor violate a clear Federal interest. This act involves local legislation only with no Federal impact and it does not set precedent—

40 States already have laws similar or nearly similar to the District of Columbia Act 4-69. No legislation in the history of home rule has had a more extended or public consideration. As well as beginning hearings on this matter in 1977, before enactment the legislation was fully reviewed, both by the U.S. attorney and Corporation Counsel and their suggestions were incorporated into the bill.

The act is a comprehensive act which will modernize and consolidate the District of Columbia law regarding "sexual assault." Up to this point laws on sexual activity or conduct were scattered among seven separate chapters of the District of Columbia Code. The change in the statute, which is supported by the ABA, Gray Panthers, Downtown Cluster of Churches, ACLU, Metro Police, National Coalition Against Sexual Assault, Washington Central Labor Council, the United Church of Christ, and many other related organizations, only repeals prohibitions on noncommercial sexual conduct between consenting adults; it expands the protection against sexual abuse of previously unprotected classes of persons and strengthens prohibitions against sexual conduct with children, by grading the crime according to the age of the victim and perpetrator.

Even the author of the discharge motion, in testimony he gave on the act stated that:

Individual conduct is not properly a concern of government unless that conduct harms others . . .

Noncommercial conduct between consenting adults does not fall into that category.

Clearly the City Council has a right to create its own laws and this law is not in violation of the District Committee's three criteria which might justify disapproval. In support of home rule I urge my fellow Members to join me in opposition to the discharge motion.

Mr. McKINNEY. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The gentleman from Connecticut (Mr. McKINNEY) yields back 2 minutes to the gentleman from California (Mr. DELLUMS).

Mr. PHILIP M. CRANE. Mr. Speaker, I yield such time as he may consume to the gentleman from Virginia (Mr. FARRIS).

Mr. FARRIS. I thank the gentleman for yielding.

Mr. Speaker, I would point out to this body that I am the second ranking minority member on the District of Columbia Committee and, as some of my colleagues may have noticed, from time to time I have some modest interest in what transpires here. I have the privilege of representing an adjoining area of this great Nation.

I would also remind my colleagues that I was a Member of this body in 1973 when the Home Rule Act was

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adopted. I supported it, I voted for it, I worked on it, and I am proud of it.

I take this time, Mr. Speaker, to make one brief statement. Home rule carries with it responsibilities, as well as rights and benefits. That responsibility, includes the requirement of quality public education, adequate public safety, equitable personnel procedures, and enactment of reasonable public laws. If the present administration of the District of Columbia would understand these principles, they would have a great deal more success in working with the majority of the Members of this Congress.

The SPEAKER pro tempore. The gentleman from California (Mr. DELLUMS) has 2 minutes remaining.

The gentleman from Illinois (Mr. PHILIP M. CRANE) has 18½ minutes remaining.

Mr. PHILIP M. CRANE. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. DELLUMS. Mr. Speaker, I yield the remaining 2 minutes to the distinguished gentleman from the District of Columbia (Mr. FAUNTROY) for the purpose of closing the debate.

(By unanimous consent, Mr. FAUNTROY was allowed to proceed for 5 additional minutes.)

Mr. FAUNTROY. Mr. Speaker, the chairman of the Committee on the District of Columbia has eloquently made the argument relating to the home rule dimensions of the discharge motion before us. I should like to focus more specifically on the extent to which this discharge motion would violate the integrity of the committee process in this body.

The fact is that you are asking the House to discharge a committee from a responsibility which it has already duly exercised.

Are we being asked to discharge a matter from a committee that has sat on it? Obviously, no. This committee has fully carried its mandate and acted both expeditiously and judiciously on House Resolution 208. In short, the motion to discharge would denigrate and dismiss the proper and careful considerations that this committee has given to the subject matter.

The discharge motion is based on some concerns that the author and others have with the substance of the act passed by our locally elected city council. The question becomes: Do we wish to discharge this because this act would remove all sanctions on homosexuality, as has been claimed?

If that is the basis on which you vote for the discharge petition, I certainly hope that, should it succeed, you are a part of the 10 hours of debate on the question which will show that that is simply not the case, that is not in fact true; and had those of us who are Members of this body been in the hearings by the City Council or been in the hearings held by the District Committee, they would know that. It has been suggested that you

ought to support this discharge motion because the act repeals statutes prohibiting adultery and fornication. I submit to you that, had the Members of this body filed a petition to run for the City Council and been duly authorized to conduct the hearings, they would know that that is not the case.

□ 1230

Had they been on the Committee of the District of Columbia, which has duly discharged its responsibility to hold hearings on House Resolution 208, they would know that. But we will get into that. If necessary, during the extended debate on the substance of what the duly elected representatives of the people of the District of Columbia have concluded about the model criminal code and the suggestion and recommendations of the commission authorized by this Congress to review the District of Columbia criminal codes.

Let us be honest with one another. The fact is that this measure is about to take 10 hours of the time of the Members of this body because of the insistence of some persons in our country who lack the courage to go to the 25 States of this Union.

We know why this issue has become of such critical importance that we are prepared to set aside the other issues of vital importance to the people of this Nation to discuss it is because some people are prepared to dump on the residents of the District of Columbia, when they do not have the courage to go to the 25 States of this Union and to see to it what they would impose upon us is imposed upon them for they have no such regulations.

We know that the same people are not prepared to bring before this national body a law that would require of all the States of the Union what they want to require of the people of the District of Columbia.

Mr. Speaker, I am a minister of the gospel and I have no objection to people who have deeply held religious convictions expressing themselves and acting upon them in the body politic generally, but I say to those who want to dump on the District of Columbia what they are not willing and prepared to do nationally, that when they come to this Chamber, that when they come to the District of Columbia, come with the whole gospel, and we are appointed by God to declare good news to the poor.

The same people who deny us the right to enact a criminal code and meet the needs of the people of our city are the same people who have counseled the Members of this Congress to deny food stamps to the hungry and health care to the sick, and housing to the ill housed, and jobs to the jobless, and I say to them if I were Jesus of Nazareth in the Sermon on the Mount, beware of false prophets who come to you in sheep's cloth-

ing, and in their hearts they are "venomous wolves."

If I were the psalmist, their tongues are smoother than butter, but war is in their hearts.

The words out of their mouths are softer than oil and yet they have drawn swords to cut out the heart not only of the democratic process, but within the committees of the Congress of the United States, but of the Home Rule Act which we in good conscience passed nearly 10 years ago.

And to some of them I would say, if I were the Apostle Paul, speaking to the conservative Church of Rome, I bear you record that you have a zeal for God, but not according to knowledge, for you being ignorant of God's righteousness and going around to establish your own righteousness have not submitted yourselves to the righteousness of God.

Mr. CONYERS. Mr. Speaker, will the gentleman yield?

Mr. FAUNTROY. I yield to the gentleman from Michigan.

Mr. CONYERS. I thank the chairman of the Congressional Black Caucus for yielding before he gets into his more secular remarks, because I think that he might want to point out that maybe some of the Members who voted just previously are not advised of the premises at all under what is in this law that is considered obnoxious to some.

Would it be fair in our charity to consider that maybe some of the Members maybe were not fully advised what they were voting on?

Mr. FAUNTROY. I can say without fear of successful contradiction that many voted not knowing that the act which was passed by our city council does not, as suggested, remove all sanctions against homosexuality. Indeed, it strengthens the provisions with respect to homosexuality.

Mr. CONYERS. So we are forgiving those who erred in this transgression that occurred here today?

Mr. FAUNTROY. I ask in the name of the Apostle Paul that they be forgiven. But, let me say very seriously my essential point, Mr. Speaker, is that we are dealing with a question first of the integrity of our committee process. This is not a committee that has sat on legislation the way others who in years past have done on legislation designed to disenfranchise American citizens generally and the District of Columbia particularly.

We have discharged our responsibility fully and have reached a well considered conclusion, 8-to-3, a bipartisan basis, and so on the basis of that along, Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion to discharge the committee offered by the gentleman from Illinois (Mr. PHILIP M. CRANE).

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Fraser	Mason	Smith (OR)
LaPalme	Nichols	Smith (PA)
Lagumarkin	Onkar	Snove
Leah	Orey	Spence
Leath	Panetta	Solars
LeBlondier	Peisman	Solomon
Lee	Patterson	Spence
Levin	Pearl	Stanton
Levitt	Pence	Stangeland
Loew	Perrine	Stanton
Long (LA)	Phillips	Stanton
Loft	Pickle	Stanton
Lovely (CA)	Porter	Stratton
Lujan	Rahall	Stump
Lumpkin	Ralback	Tufts
Madigan	Raiford	Tufts
Marienne	Regula	Taylor
Martini	Rice	Tennison
Martin (IL)	Ritter	Tranter
Martin (NC)	Roberts (EZ)	Vander Jagt
Martin (NY)	Roberts (SD)	Vander Jagt
Martinez	Rodriguez	Walgren
McCarthy	Romer	Walker
McCollum	Rogers	Wampler
McGee	Ross	Walters
McDonald	Rostenkowski	Weber (MH)
McEwen	Roth	Weber (OH)
McGrath	Rosen	Whelan
Mich	Rudd	Whitehurst
Miller (OR)	Russo	Whitley
Mitchell	Sabini	Whitaker
Mitchell (NY)	Schuler	Wilcox
Monahan	Schum	Williams (MT)
Morgan	Schumacher	Williams (OH)
Montgomery	Shaw	Winn
Moore	Shaw	Wolf
Morhard	Shelby	Worley
Mortimer	Shenoy	Wyatt
Motti	Shuster	Wyatt
Murphy	Silander	Yale
Murphy	Skinner	Young (AK)
Myers	Stein	Young (FL)
Nugler	Stetson	Young (MO)
Neicher	Smith (AL)	Zabotki
Nelson	Smith (NE)	Zerfiski
Nolligan	Smith (NJ)	

NAYS—110		
AsCote	Frank	Oberstar
Burns	Prussel	Obery
Bodell	Garcia	Pryor
Edelmann	Johnson	Price
Blum*	Gilman	Pritchard
Boiling	Gornsbun	Pursell
Brady	Graham	Rafael
Brown (CA)	Gray	Reus
Burien, John	Green	Rhodes
Burton, Frances	Griffin	Rosen
Butler, Philip	Holbertson	Rue
Casino	Horton	Ruethorn
Chapman (LL)	Howe	Schaefer
Conable	Joyce	Noybal
Conyers	Jacob	Sabo
Coughlin	Jack	Schneider
Coyne, James	Katzenberger	Schroeder
Coyne, William	Lantis	Shanahan
Craig	Leahman	Shannon
Delaney	Levin	Shaw
Dillon	Levinson	Stark
Joyner	Levy (MD)	Steele
Joyner	Long	Stude
Joyally	Lubert	Sym
Kear	Lundine	Symant
Kearns (AL)	Lundquist	Talbot
Kearns (LA)	Mark	Talbot
Kearns	Marshall	Vento
Kelly	McHugh	Weaver
Kernick	McKinney	Wies
Kerr	McNulty	Wolpe
Kilian	Miller (CA)	Wyden
Koeltgen	Mierola	Yates
Koeltgen (MD)	Miller (MD)	
Koeltgen (TX)	Norwak	

NOT VOTING—36

Adabbo	Dornan	Moffett
Leard	Florio	Mollinari
Ingall	Gaydos	O'Brien
Hanchard	Goldwater	Ottinger
Henry	Hansen (UT)	Parris
Hishelmin	Holland	Pashayan
Oronson	Jones (NC)	Pepper
Reskett	Jones (OK)	Quilley
Runnemyer	Lent	Richmond
Smith	Masotti	Savage
Weldard	McCluskey	Tribble
Ingall	McDade	Washington

□ 1300
Mr. McHUGH changed his vote
from "yea" to "nay."
So the motion was agreed to.
The result of the vote was an-
nounced as above recorded.
The resolution reads as follows:

Resolved, That the House of Representatives disapproves of the action of the District of Columbia Council described as follows: The District of Columbia Sexual Assault Reform Act of 1981 (D.C. Act 4-69), signed by the Mayor of the District of Columbia on July 21, 1981, and transmitted to the Congress pursuant to section 602(c)(2) of the District of Columbia Self-Government and Governmental Reorganization Act on July 21, 1981.

The **SPEAKER** pro tempore. Pursuant to the provisions of section 604(h) of Public Law 93-198, the gentleman from Illinois (Mr. PHILIP M. CRANE) will be recognized for 5 hours, and the gentleman from California (Mr. DELUMS) will be recognized for 5 hours.

Mr. PHILIP M. CRANE. Mr. Speaker, I would like to make a unanimous-consent request based upon the succession of votes that we have already had, and the fact that there is pressing other business. I do not mean to minimize the importance or the significance of the issue under discussion, but I think there is a conversancy on the part of the Members of this body as to what the issues are that are involved here, and I think minds are pretty well made up.

Mr. Speaker, I ask unanimous consent that we limit our debate to 1 hour, to be divided equally.

The **SPEAKER** pro tempore. Is there objection to the request of the gentleman from Illinois?

Mr. DELLUMS. Mr. Speaker, reserving the right to object, I do so for the purposes of entering into a colloquy with my distinguished colleague from Illinois.

First, I would state to my distinguished colleague that I am shocked the gentleman suggests 1 hour when we just got through talking less than 2 minutes ago that the gentleman would ask for a maximum of 2 hours.

Mr. PHILIP M. CRANE. If the gentleman will yield, I will certainly consider 2 hours. I was hopeful that we might be able to do it in 1, but if my distinguished colleague is persuaded that he needs the additional hour, I will even go so far as to yield time out of my 1 hour of that 2-hour period to the gentleman for discussion if he will accept the 2-hour limitation.

Mr. DELLUMS. If I may reclaim my time, Mr. Speaker, further reserving the right to object, I would just state to my distinguished colleague and Members of the House that I figure there is no more important business to come before this body than to address the fundamental issues that are embodied in the action that we are about to take.

The second point, Mr. Speaker, is that on rare occasions has this body attempted to limit debate before it even engaged in the debate. We have no idea, Mr. Speaker, how many people on this floor seek to engage in a significant discussion on this matter.

I would suggest to my colleague from Illinois that his unanimous-consent request at this moment is premature. This is considered to be the greatest deliberative body in the world. We at this point are enunciating democratic principles all over the world, and it would seem to me that to engage in a limited debate on a matter of this magnitude, of this degree of controversy, with this many people interested, would be the height of absurdity.

I would ask my distinguished colleague if he would either do one of two things, and I would yield for his response. I would be prepared to support the gentleman's unanimous-consent request if he asks unanimous consent to limit debate from 10 hours down to 5 hours; or rather than limit debate, maybe he will allow this debate to go forward for a couple of hours. This gentleman will continue to be in communication with the gentleman from Illinois. At the end of a couple of hours we can determine whether or not there is significant interest that would warrant further debate on the floor.

Mr. PHILIP M. CRANE. Well, I know that there is some strong sentiments on both sides of the aisle to get on with the other business, and for that reason, I would still insist on my unanimous-consent request that we can establish a time certain of 2 hours. As I say, I will be happy to give some of my time to the chairman of the District of Columbia Committee.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

Mr. MITCHELL of Maryland. Mr. Speaker, I object.

The **SPEAKER** pro tempore. Objection is heard.

MOTION OFFERED BY MR. PHILIP M. CRANE
Mr. PHILIP M. CRANE. Mr. Speaker, I offer a motion.

Mr. PHILIP M. CRANE moves to limit debate on the resolution to not more than 2 hours.

Mr. PHILIP M. CRANE. Mr. Speaker, I move the previous question on the motion.

The previous question was ordered.
The SPEAKER pro tempore. The

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Illinois (Mr. PHILIP M. CRANE).

The question was taken; and the Speaker pro tempore being in doubt, the Committee divided, and there were—yeas 106; nays 66.

Mr. DELLUMS. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the

NOT VOTING-36

Mr. DELLUMS. If I may reclaim my time, Mr. Speaker, further reserving the right to object, I would just state to my distinguished colleague and Members of the House that I figure there is no more important business to come before this body than to address the fundamental issues that are embodied in the action that we are about to take.

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point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently quorum is not present. The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 253, nays 141, not voting 39, as follows:

[Roll No. 253]
YEAS—253

Albosta Piqua Ostly
Alexander Grphardt Peiman
Andrews Gibbons Patterson
Annunzio Ginn Paul
Applegate Gooding Perkins
Archer Gore Porter
Ashbrook Grams Price
Atkinson Gregg Pursell
Badham Grisham Rahall
Bafalis Gunderson Ratcliff
Bailey (MO) Haggard R-ula
Barnard Hall (OH) Rous
Benedict Hamilton Rhodes
Bennett Hance Riddle
Beverly Hansen (ID) Ritter
Bethune Hartnett Roberts (KS)
Biaggi Malcher Roberts (SD)
Billey Heckler Robison
Boner Hefel Roe
Bonker Hendon Rogers
Bouquard Hightower Rome
Brewen Illier Rostenkowski
Breaux Illius Roth
Brinkley Holt Roekema
Brodnick Hopkins Roussot
Brounfield Horton Rudd
Brown (CO) Hubbard Russo
Brown (OH) Hucksby Sawyer
Broynhill Hunter Schulze
Buckler Kahn Seamenbrenner
Byron Hyde Shaw
Campbell Ireland Shelby
Carman Jelicina Shumway
Carmy Jenkins Shuster
Chappell Johnston Siljander
Chapple Jones (TN) Simon
Cherry Krenn Skene
Clausen Kildee Skelton
Clinger Kindness Smith (AL)
Cotis Kramer Smith (IA)
Coleman LaPrace Smith (NE)
Collins (TX) Lagomandino Smith (NJ)
Conable Latta Smith (OR)
Cortier Leath Snowe
Coyne, James Lee Snyder
Craig Lee Spence
Crane, Daniel Lewis St Germain
Crane, Philip Livingston Stangland
Crymours Loeffler Stanton
Cuniet, Dan Lott Staten
Daniel, R. W. Lowery (CA) Stenholm
Dannmeyer Lujan Strahan
Dau Lundine Stump
Davis Longren Swift
de la Garza Madigan Tanke
DeFazio Marlenee Tausin
DeFazio Marriot Taylor
Dickson Martin (IL) Thomas
Dicks Martin (NC) Vander Jagt
Dorgan Martin (NY) Vento
Douglas McCleary Volkmer
Dowdy McCollum Waldman
Dreier McCurdy Weber (MN)
Duncan McDade Weber (OH)
Dunn McDonald White
Dwyer McEwen Whitburn
Eckart McGrath Whitley
Edwards (AL) Mica Whitaker
Emerson Miller (OH) Whitten
Emery Mitchell (NY) Williams (MT)
Engelsh Molinari Williams (OH)
Ernst Mollahan Wynn
Fenburn Montgomery Wirth
Frost (DE) Moorhead Wolf
Evans (IA) Morrison Wortley
Fury Mott Wright
Fenwick Murtha Wyatt
Fiedler Myers Yatron
Florida Napier Young (AK)
Findley Fletcher Young (MO)
Filippo Neilligan Zablocki
Florythe Nelson Zetseriti
Fountain Nichols
Frenzel Nowak

NAYS—141

Akaka Ford (TN) Moskley
Anderson Powell Moffett
Anthony Frank Moon
AuCoin Neal
Bailey (PA) Carvia O'Brien
Barnes Gjedenvon Oskar
Bedeil Gilman Oberstar
Bevil Omerich Obey
Bingham Calkins Parnita
Boas Gonzalez Pata
Boland Gray Petri
Bolling Green Pryor
Bonior Guarini Pritchard
Breen (CA) Hall, Sam Rosten
Burton, John Hammermichud Rangel
Burton, Phillip Herkin Rodino
Cay Dwyer Romney
Covino Hoffman Roybal
Collins (IL) Hollenbeck Sabo
Cory, William Hoyer Santini
Danielson Hughes Scheuer
Dachle Jacobs Schneider
Dellme Jeffords Schroeder
Derrick Jones (OK) Schuwert
Dierks Kastner Scherling
Diton Kasten Rhamansky
Donnelly Kogovick Shannott
Downey Lantos Sharp
Dwyer Leach Smith (PA)
Dymally Lehman Solars
Early Levitas Stark
Eagar Long (LA) Stokes
Edwards (CA) Long (MD) Stucka
Edwards (OK) Lowry (WA) Syner
Eriol Lubin Traister
Evans (CA) Marks Udall
Evans (IN) Matsui Walgren
Fazio Malton Walker
Ferraro Mavroules Wampler
Fitz Philas Weaver
Fletcher McKinney Weiss
Fithian Miller (CA) Wolpe
Flanigan Mineta Wyden
Ford (MI) Mink Yates
Forsyth Mitchell (MD) Young (FL)

NOT VOTING—39

Isoin Mikulski
Layden Murphy
Goldwater Ottinger
Hall, Ralph Parris
Hansen (UT) Pashayan
Hawkins Pepper
Holland Quinn
Hornum Richmond
Leland Savage
Markay Tribie
Mazool Washington
McCloskey Waxman
Michel Wilson

□ 1330

Mr. VENTO changed his vote from "nay" to "yea."

So the motion was agreed to.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore. The gentleman from Illinois (Mr. PHILIP M. CRANE) will be recognized for 1 hour, and the gentleman from California (Mr. DELUMS) will be recognized for 1 hour.

The Chair recognizes the gentleman from Illinois (Mr. PHILIP M. CRANE).

PARLIAMENTARY INQUIRY
Mr. CONYERS, Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The Chair will inquire, does the gentleman from Illinois (Mr. PHILIP M. CRANE) yield for a parliamentary inquiry?

Mr. PHILIP M. CRANE. Yes indeed, Mr. Speaker.

Mr. CONYERS. Mr. Speaker, I thank the gentleman for yielding.

May I inquire, Mr. Speaker, was the previous vote not on the previous question?

The SPEAKER pro tempore. No. The Chair will inform the gentleman that the previous vote on the motion offered by the gentleman from Illinois (Mr. PHILIP M. CRANE).

The Chair recognizes the gentleman from Illinois (Mr. PHILIP M. CRANE).

Mr. PHILIP M. CRANE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, on September 9 of this year my resolution to disapprove the District of Columbia's Sexual Assault Act was introduced in the House. The act, passed by the City Council and sent to Congress in July, will become law in the District unless under a provision of the Home Rule Act, it is disapproved by the House or Senate prior to October 5.

I urge my colleagues to exercise the authority provided for in that act and join me in voting to disapprove the proposal. On balance, I feel that the act represents a substantial improvement in the District's Criminal Code, and I very much support those provisions which extend legal protections to victims of assault. Unfortunately, though, I think the proposal is laced with provisions which are so onerous as to make the proposal totally unacceptable both to a majority of the residents of the community and, more importantly, a majority of the citizens of the country.

Although the basic proposal stems from years of legal evaluations and public hearings, the final product, most especially those objectionable provisions, was not discussed in public hearings. Many of the civic associations and religious organizations in the District and elsewhere are strongly opposed to the measure, and that includes, among others, such people as Archbishop Hickey of Washington, D.C., the National Association of Evangelicals, and the Baptist Ministers Conference here in Washington, D.C.

I would like to read a letter from Archbishop Hickey to my colleagues at this time. It reads as follows:

My brothers and sisters in Christ: The Council of the District of Columbia this week enacted legislation intended by its authors to modernize and consolidate the laws of the District regarding sexual assault. The bill broadens the traditional definition of rape to include forms of compulsion other than physical force.

Efforts to combat rape more effectively commendable. I am pleased, also, that the provisions protecting children and minors from sexual abuse remain in the law.

The new legislation, however, removes civil prohibitions with regard to adultery, fornication and sodomy. By so doing the law withdraws significant support for fundamental values of our Jewish and Christian moral tradition. The fabric of society is weakened when basic values of family life and human sexuality are no longer protected by law.

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Adultery, fornication and sodomy are immoral. The withdrawal of civil prohibitions and penalties does not make them morally permissible. They are wrong because of the very nature of human love, sexuality and the family. Our present situation, therefore, makes it even more necessary that the family and the Church community offer guidance and encouragement in the areas of moral judgment and value formation based on the enduring law of God taught to us by the Lord Jesus.

Each of us should take this occasion to renew our own dedication to the teaching and example of Christ and to pray that our society will uphold those fundamental human values received from God himself. They are for the welfare of our families and of people everywhere.

Asking your prayers for all families and for all who seek to live in Christ Jesus, I am, Sincerely in Christ,

JAMES A. HICKEY,
Archbishop of Washington.

Mr. Speaker, none of us is interested in interfering in the private lives of citizens or in mandating moral values. However, there are certain objective standards of ethical conduct which we as legislators should not permit to be violated. Portions of the D.C. proposal do precisely that. The three most objectionable aspects of the proposal do the following:

First, they reduce the maximum penalty for forcible rape from a possible life term to no more than 20 years. For violent, especially recidivist acts of this nature, this penalty is grossly insufficient, particularly when the perpetrator is further benefited by lenient judges unwilling to levy the maximum penalty or the parole process which puts him on the street after serving only a fraction of his sentence.

□ 1348

Section 13 of the proposed act removes completely the proscriptions against, and as a result the penalties for, the seduction of children as young as 16 years of age. The same section of the bill decriminalizes sodomous homosexual activity.

As indicated earlier, I am not attempting to stipulate moral values, but there are certain types of behavior, such as those listed above, which are fundamentally, ethically and morally wrong. We would be remiss in fulfilling our responsibilities as legislators if we were to acquiesce in the legitimization of conduct which we, and more importantly our constituents, find unacceptable.

Neither the Founding Fathers when they made provisions for the District in the Constitution, nor the Congress when it permitted home rule, had any intention of establishing an independent competitive or even autonomous governmental entity here in Washington.

Let me read for the benefit of those who have not reviewed it recently, article 1, section 8 of the Constitution. It states:

The Congress shall have power . . . To exercise exclusive Legislation in all cases whatsoever, over such district . . . as may,

. . . become the Seat of the Government of the United States. . . .

In the Self-Government Act of 1973 there is a "reservation of Congressional authority" provision. Section 601 states:

Notwithstanding any other provision of this Act, the Congress of the United States reserves the right, at any time, to exercise its Constitutional authority as legislature for the District, by enacting legislation for the District on any subject, whether within or without the scope of legislative power granted to the Council by this Act, including legislation to amend or repeal any law in force in the District prior to or after enactment of this Act and any act passed by the Council.

Let anyone in this body think that this Congress has not exercised that authority, we have, even with regard to such things as prohibiting meters in D.C. cabs, and most recently, in fact last week the House blocked a D.C. plan to hire new police officers and firemen by lottery. Last week the House also blocked a D.C. plan for a citywide gambling lottery. Last week the House blocked a D.C. plan for hauling sludge to Pennsylvania.

This Congress, in section 601 of the Home Rule Act providing for this oversight and involvement on the part of the National Congress as far as the District of Columbia is concerned I think demonstrated an appropriate kind of foresight. The District is the seat of the Federal Government. It belongs to all of our citizens every bit as much as it does to its residents. To the extent that the tax dollars from our constituents are expended to maintain the Federal City, then we have a continued stake in what happens here.

The House should vote to return the measure to the City Council for a thorough reworking and a full public discussion of the final product. When the measure returns to the House I will be happy to write my colleagues urging its approval. In the meantime, I would urge they join me in voting in favor of my resolution of disapproval which will send this D.C. act back to the City Council for reconsideration.

Mr. STUDDS. Mr. Speaker, will the gentleman yield?

Mr. PHILIP M. CRANE. I yield to the gentleman from Massachusetts (Mr. STUDDS).

Mr. STUDDS. I thank my colleague for yielding. Did I understand the gentleman to cite a letter from Bishop Hickey, the Roman Catholic Bishop of Washington?

Mr. PHILIP M. CRANE. I did indeed, in an open letter which appeared in the Catholic Standard.

Mr. STUDDS. I would assume in so doing that the gentleman is citing Bishop Hickey as a knowledgeable source on this kind of a question which involves values and morals, and I would assume, therefore, that the gentleman also agrees with Bishop Hickey, who testified before the Foreign Affairs Committee of this House, with respect to the immorality of the U.S. position in El Salvador. He was

speaking in behalf of the Conference of Catholic Bishops.

Mr. PHILIP M. CRANE. I would say to the gentleman that Archbishop Hickey's comments that I read address a specific issue. I am not conversant with all of Archbishop Hickey's stands on other issues, although I can tell the gentleman safely that I know that he would not be defined as one of PHILIP CRANE's political philosophy. As a result, I think he is an independent witness and an objective witness on a subject where we do happen to share some common ground.

Mr. Speaker, I reserve the balance of my time.

CALL OF THE HOUSE

Mr. CONYERS. Mr. Speaker, I move a call of the House.

A call of the House was ordered.

A call was taken by electronic device, and the following Members responded to their names:

(Roll No. 231)

Alaka	Crane, Philip	Core
Albosta	Daniel, R. W.	Gradison
Alexander	Danielson	Gramm
Anderson	Danemeyer	Gray
Andrews	Daub	Oreen
Annuaso	Davis	Oreng
Anthony	de la Garza	Orr
Ashbrook	Deckard	Orrison
Aikins	DeLuca	Ounderson
Autcoin	Derrick	Hagdon
Badham	Derwinski	Hall, Ralph
Ballala	Dickinson	Hall, Sam
Bailey (MO)	Dicks	Hamilton
Bailey (PA)	Disson	Hansens
Barnard	Dorgan	Hansen (ID)
Bedell	Dowdy	Harkin
Benedict	Downey	Wartick
Benjamin	Dreier	Hatch
Bennett	Duncan	Hawkins
Bereuter	Dunn	Heflat
Bethune	Dwyer	Hendon
Bevill	Dymally	Hertel
Boggi	Dyson	Hightower
Bingham	Eckart	Hiler
Billey	Edgar	Hille
Boggs	Edwards (AL)	Holt
Boland	Edwards (OK)	Hopkins
Bolling	Emerson	Howard
Boner	Emery	Hoyer
Bonior	Engleth	Hubbard
Bonker	Erdahl	Huckaby
Boquard	Eriel	Hughes
Bowen	Evans (ID)	Hunter
Braux	Evans (GA)	Ittles
Brinkley	Evans (IA)	Hyde
Broadhead	Evans (IN)	Ireland
Brooks	Fary	Jacobs
Broomfield	Fasell	Jeffords
Brown (CO)	Ferwick	Jeffries
Brown (OH)	Ferraro	Jenkins
Broyhill	Fiedler	Johnston
Burgess	Fields	Jones (TN)
Burton, Phillip	Findley	Kastenmeier
Butler	Fish	Kasen
Byron	Florian	Kemp
Cambell	Flippo	Kildee
Carnan	Foglietta	Kopovsek
Carnoy	Foley	Kramer
Chappie	Ford (MI)	LaPelle
Cheney	Ford (TN)	Lagonarudis
Clausen	Fontaine	Lantos
Clinger	Fowler	Latta
Costa	Frenzel	Lesch
Cochise	Fugate	Leahy
Coleman	Garcia	LeBoutillier
Collins (TX)	Gaydos	Lee
Conable	Gejdenson	Leahy
Conse	Gephardt	Levin
Conyers	Gibbons	Lewis
Courter	Gilman	Livingson
Coyne, James	Gingrich	Loeffler
Coyne, William	Ginn	Long (LA)
Craig	Glickman	Long (MD)
Crane, Daniel	Gonatas	Loft

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Lowery (CA) Pease
Lowry (WA) Perkins
Lukin Tri
Lukin Iyer
Lundine Pickle
Madison Porter
Marika Stangland
Marriott Pritchard
Martin (IL) Purcell
Martin (NY) Stenholm
Mation Rallsack
Mayroules Range
McClery Ratchford
McColham Regula
McCurdy Rhodes
McDade Richmond
McDonald Rinaldo
McEwen Ritter
McGrath Roberts (KS)
McHugh Robinson
McKinney Roe
Mies Roemer
Mikulski Rogers
Miller (CA) Rose
Miller (OH) Rosenthal
Mineta Rostenkowski
Minish Roth
Mitchell (MD) Roukema
Mitchell (NY) Rouselet
Monkley Roybal
Moffitt Weber (OH)
Molinaro Weiss
Molohan White
Moore Sawyer
Moorehead Schneider
Morrison Whitaker
Mott Whitener
Murphy Williams (OH)
Murtha Winn
Myers Rosenbrenner
Napier Wolf
Natcher Shannon
Neal Sharp
Nollan Shelby
Neilon Shumway
O'Brien Shuster
Ocasio Tate
Oberstar Skeen
Obey Skelton
Orley Smith (AL)
Pansia Smith (IA)
Palman Smith (NE)
Patterson Smith (NJ)
Paul Smith (OR)

□ 1400

The SPEAKER pro tempore. On this rollcall, 352 Members have recorded their presence by electronic device, a quorum.

Under the rule, further proceedings under the call are dispensed with.

DISAPPROVING ACTION OF DISTRICT OF COLUMBIA COUNCIL IN APPROVING THE DISTRICT OF COLUMBIA SEXUAL ASSAULT REFORM ACT OF 1981

The SPEAKER pro tempore. The Chair recognizes the gentleman from California (Mr. DELLUMS).

Mr. DELLUMS. Mr. Speaker, I yield myself such time as I may consume.

Mr. DELLUMS. Mr. Speaker, I would like to focus the debate on the issues before us.

The distinguished gentleman from Illinois (Mr. PHILIP M. CRANE) has brought before this body House Resolution 208, a resolution to disapprove a specific action of the Council of the District of Columbia, the District of Columbia Sexual Assault Act of 1981, District of Columbia Act 4-69.

The question before us at this point is: How do we now proceed in our consideration of this resolution?

My colleague, the gentleman from Illinois, argues that the Constitution

gives us the responsibility to review any act passed by the Council of the District of Columbia to which we take objection. That is embodied in the Home Rule Act of 1973. We have the specific right to reserve unto ourselves the review of all laws enacted by the District of Columbia Government and under certain provisions our colleagues can bring a resolution of disapproval, have it referred to the District of Columbia Committee and then, based upon the committee's action, have it come before the full body of the House of Representatives.

Now, the question is, how do we as a body proceed?

It seems to me, Mr. Speaker, there are two directions in which we can go. Direction No. 1 is to repeat the process by which the city council arrived at its action.

In 1974, the U.S. Congress brought to reality the Law Revision Commission. In 1977, the Law Revision Commission made recommendations to the city council with respect to modernizing and reforming the Criminal Code. In 1980 and 1981, the City Council of the District of Columbia held extensive hearings. Those hearings were the basis upon which the city council acted.

Now, I have here, Mr. Speaker, the list of the witnesses that were brought before the city council in hearings over a 2 year period. In this first page, without reading the names, there are 15 witnesses listed; on the second page, 6 witnesses; on the third page, 12 witnesses; on the fourth page, 11 witnesses; on the fifth page, 14 witnesses; on the final page, 12 witnesses.

Now, if we are going to proceed with the first potential alternative, and that is to repeat the action of the city council, we would indeed in all good faith have to hold a series of hearings throughout this entire city, in every neighborhood area, and come up with a list of 50 or 60-plus people who would have the opportunity to testify. We could go through the act word by word, line by line, sentence by sentence, and evaluate the law enacted by the city council. But I would suggest that we are not a court of competent jurisdiction, unless we are prepared to at least replicate and/or go beyond what the city council did in arriving at its decision to enact District of Columbia Public Law 4-69, a bill to reform the Criminal Code in the specific area of sexual assault.

But we as a body chose in 1973 to not replicate the city council. We in our wisdom decided that there were too often competing interests in the District of Columbia: the Federal interest, and that is all of America's interest in the Capital of the United States, and the local interest, the 600,000 or 700,000 human beings who live in Washington, D.C., who have the right to the franchise, as any other citizen in the United States.

We in our wisdom decided that we did not want the District of Columbia to be a colony of the United States.

□ 1418

In fact, there are many organizations that perceive the District of Columbia as the last colony of the United States, and my colleagues in their collective wisdom suggested that we must do away with that, give the District of Columbia the franchise, and we did.

And so it would seem to me that to attempt to replicate the business of the city council is an absurdity. Eight years ago we decided that we had more important things to do than to act as the city council of the District of Columbia. We had foreign policy calculations to absorb and consider. We had defense policy calculations to absorb and consider. We had enormous domestic issues affecting over 200 million Americans that we should be engaging in and placing our intellectual, spiritual, moral, and political energies into that business, and we said, let us free ourselves of the business of being the city council and we enacted in 1973 the Home Rule Act. The residents of the District of Columbia duly elected a mayor and city council to do the business, to express the will of the people in this district. So they engaged in this process, and, as a result, unanimously, not majority, unanimously, enacted this law, 13 to 0.

So, if we decide or if we are consistent with our efforts in home rule, we must now strike this first proceeding, and that is to replicate, repeat, engage in redundant activities with respect to what the District of Columbia did in arriving at the enactment of this law.

What is the second mechanism? The second mechanism is to think through what was the spirit and the intent of Congress when it enacted the law in 1973. We said we chose not to be the city council. We stepped back from that, but my colleagues on this side of the aisle who support this resolution are correct, my colleagues did write into the law an opportunity to review. That is not the question here.

The question is: What criteria shall we use in the process of review that is consistent with the Home Rule Act and is consistent with our desire for justice and our desire to embrace high ideals of democracy, democratic principles and democratic procedures?

That then leads us to how the District of Columbia Committee arrived at the criteria it established in trying to determine whether we shall or shall not vote on a resolution of disapproval.

We decided that it was not within our jurisdiction, in terms of the spirit of the Home Rule Act, or our competency to look at the specific legislation. We came up with different criteria. We said, No. 1, does the act of the city council violate the Home Rule Act? That seems to me quite reason-

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able and quite intelligent and one can arrive at an objective assessment of that question.

Irrespective of political views, ideological perspective or value orientation, the question is: Did they violate the Home Rule Act?

A reasonably intelligent human being can take the Home Rule Act in one hand and the act of law of the city council in the other and arrive at some conclusion with respect to that.

No one here argues that they have exceeded their authority or indeed violated any section, any line, any sentence, of the Home Rule Act.

Our second criteria was, have the council violated the Constitution of the United States? No one here is competently asserting with a straight face, Mr. Speaker, that this act in any way challenges constitutional prerogatives or constitutional rights of any American citizen.

The third criteria, does the act of the council in any way raise a Federal issue or obstruct the Federal interest? And what is the Federal interest? Does it obstruct the capacity of the U.S. Congress to represent 200-plus million Americans as it carries out its responsibility? Has the city council engaged in an act that thwarts our capacity to do this? The answer to that is no.

So, I am suggesting, Mr. Speaker, and Members of this body, it is a serious matter before us. It is not frivolous. I feel quite pained that we are here in a limited debate on a matter that strikes at the very fundamental processes of our way of life. This is not a frivolous matter.

A few of my colleagues came in on this last rollcall angry because someone called a quorum call that would ask them to come down from the House dining room to this body and at least participate in the debate to disenfranchise 600,000 human beings, and the response was, What are you people doing? You are making us angry, we are going to vote against everything, and the point is we are prepared to harm people, but we do not want to do the work and be participants in the lynching.

If we are going to harm people at least integrity ought to dictate that we come here and do it in the full light of day and stop posturing politically for other purposes. This is a serious matter here and I would suggest that we are not competent to repeat the business of the city council. This is not an appropriate vehicle.

I chose not to engage in a dialog on the specific legislation because I think it is inappropriate before us. However, I do think, given the law, that we have a responsibility to review it. In our wisdom as members of the District of Columbia Committee, and as Members of the House, many of us have come to the conclusion that we have to have objective criteria to be used in our review that falls within the framework, the spirit and intent of the Home Rule Act.

Now some of my colleagues are saying this matter has achieved a level of significant controversy. The Moral Majority is interested in this issue. The Reverend Falwell is interested in this issue. Bishops are interested in this issue. But somewhere in the third or fourth grade I learned there is a separation of church and state here, that is, some way we ought to be engaging in dealing with matters that are our responsibility within the framework of democratic processes. And irrespective of this controversy, we ought to have the integrity to stay within the guidelines of procedures that can move us through this morass without imposing our personal religious views and without challenging a body and destroying the process simply because we disagree.

There are a number of the Members on this side of the aisle with whom I have nothing in common politically, but I would stand with them and fight violently against any effort that would deny us the right to at least express our will.

Everyone of these Members has a city council that could enact this very same law, but those same Members cannot apply that to the Government in Washington, D.C. Their response is, but this is the Capitol.

And my response is, in 1973 the Congress understood and identified the duality of interests here and we attempted in our wisdom with an extra amount of compromises to make this dichotomy as clear as we could within that really conservative atmosphere that we enacted the Home Rule Act in 1973.

So, Mr. Speaker, this is an inappropriate matter to bring before the Congress of the United States. Unless we are dealing with this within the spirit of the Home Rule Act, but many of our colleagues are saying, "But, Row, I just do not buy the specific provisions." My progressive political posture would have dictated that I vote against the gambling ordinance in the District of Columbia, as I said earlier in the debate, but I did not impose my personal will because I am more concerned about giving life to the democratic process. That is all we have, without that we are cannibals. Without a civilized set of processes, we will cannibalize each other. We are just an unruly mob of people who can willingly move on anyone irrespective of their ideas, and I am not sure that is what we are about here.

I would say to the maker of this motion, if the gentleman is serious, then why does he not offer a sexual reform act for the entire Nation and then let us engage in debate on that question.

That would at least be more honest than saying we can have home rule part of the time, but when I do not agree with it or it is inconvenient, we cannot have home rule.

People cannot live between freedom and servitude. Freedom is an absolute

principle. It seems to me that in this country, where we are now saying this is the great bastion of democracy, how can we in the Capitol of the United States thwart people's rights because we are prepared to dance on the whims of political expediency, and we all know there is enormous pressure.

A number of my colleagues do not even know what the issue is here, but some kind of way they say rights are involved. The moral majority is involved, maybe I had better dance. But my colleagues, we are dancing on our own freedoms because maybe tomorrow the challenge will be to our rights and who will stand for us.

Mr. Speaker, I reserve the balance of my time.

Mr. PHILIP M. CRANE. Mr. Speaker, I yield such time as he may consume to the gentleman from Virginia (Mr. BLILEY).

(Mr. BLILEY asked and was given permission to revise and extend his remarks.)

Mr. BLILEY. Mr. Speaker, the act which the District Council adopted contains some good provisions, including the broadening of the definition of rape to include homosexual attacks, the retention of the age of consent at 16 years instead of lowering it to 12 years as originally introduced, and the recognition that a sexual assault may take place between a married couple who are separated and not living together. These provisions reflect the world as it exists today and are in accord with our traditional beliefs and moral principles.

I must point out, however, that this act does more than redress certain outdated sections of law. D.C. Act 4-69 reduces the maximum penalty for forcible rape from life in prison to 30 years. As we all know, the current rules on parole and time off will allow a person sentenced to 30 years to get out and back on the streets in only a few years and in this instance 20 years is the maximum sentence, not the mandatory or usual sentence. The trauma and suffering that can be caused by rape as well as the psychological damage to the victim is a terrible thing and can last a lifetime and keep the victim from enjoying a normal life. This act doubles the penalty for a homosexual assault, which at least begins to acknowledge the seriousness of this form of rape, but it cuts the penalty for heterosexual rape drastically—no matter how heinous the attack or how brutal the damage to the victim. In a time when women's rights are so prominently discussed and advocated I find it difficult to understand the attempt to lessen the penalty for the forcible denial of a woman's most basic right, which is the protection of her own body.

D.C. Act 4-69 would decriminalize, and thus legitimize, almost any sexual act or practice between two, or more people as long as they all agreed to it. The law in such matters cannot be

neutral. This act, by specifically legalizing unusual sexual practices, would condone them. The moral and ethical traditions of this Nation do not condone acts such as sodomy and adultery and I do not believe that the people of America believe that they are acceptable and should be allowed by law in the Nation's Capital.

D.C. Act 4-69 contains provisions which are good and are needed, but it also contains provisions which are not only bad—they are wrong.

You have heard, and I am certain that you will continue to hear, many well meaning people say that they do not like all of the provisions of this act either, but that it is not our job to overturn a legally adopted law in the District of Columbia. I must point out that the District is a unique jurisdiction in American Government. The District of Columbia is the Nation's Capital and was set up solely for that purpose by the Congress. This fact is stated in the Constitution and final legislative authority is explicitly reserved to the Congress. The Founding Fathers clearly stated their desire for the Nation's Capital to be a special place and for the final authority over it to rest with the people of the Nation through their elected representatives.

We, as Members of Congress, cannot and must not deny our constitutional responsibilities. We are required to uphold the Constitution by our oath of office and I will not abrogate that oath and thus responsibility and allow the enactment of a law which I know to be wrong in the Nation's Capital.

I will close my statement by saying that I support House Resolution 208 and urge my colleagues to do likewise so that the District can revise D.C. Act 4-69 to more closely conform to recognized moral standards and traditions.

□ 1430

Mr. DELLUMS. Mr. Speaker, I yield such time as he may consume to the gentleman from Maryland (Mr. MITCHELL).

(Mr. MITCHELL of Maryland asked and was given permission to revise and extend his remarks.)

Mr. MITCHELL of Maryland. Mr. Speaker, I rise in support of a piece of legislation that reflects the will of the people, the will of the people of the District of Columbia.

Before addressing any substantive parts of the legislation, I just want to share a couple minutes with you in terms of my thinking about this House and my experience in this House. I have served here now almost 12 years. I have seen this House rise to glorious heights of statesmanship on occasion, and I have seen it sink to very low levels on occasion.

I think the House worries me the most when it is stampeded. I honestly believe that what we see here today is a stampede, a stampede. Why, I do not know. It might be out of political fear, fear of the far right, fear of the Moral Majority, but I think we do a disservice

to this body and ourselves personally when we unthinkingly are stampeded into action.

The best illustration that I can give of the House being stampeded was in a statement made earlier today when we were debating this issue. A Member of this House stood before us and went into a long discussion about crime, how crime would be increased and he was so angry about crime. Well, everyone is angry about crime.

In my former residence, my home in Baltimore was broken into twice. I was burglarized.

My brother's father-in-law, an 80-year-old man, was set upon by three young thugs in Baltimore and he fought his way out and kept his money. They beat him, but he fought.

My brother, Clarence, who some of you know served very long as a lobbyist for the NAACP was on his steps in his home, going up his front steps when some thugs grabbed him and tried to rob him. He resisted. He was shot in his hand.

I have had personal experience with crime and other Members of this House have. No one likes crime, but I suggest in the stampede that we are confronting here today, we get a Member making a statement that somehow or another this piece of legislation will increase crime in the District of Columbia. It was a good Member who made that statement, but he was caught up in a stampede and he made a very unthinking and illogical statement.

All that I have heard as I have moved around the floor from those who oppose the will of the District of Columbia City Council is the matter of giving legitimacy to homosexuality. I am not at all sure that the bill does that; but let me ask you just to think on the great artists, the great writers, the actors, the historians, who on their own volition chose that way of life. I do not think we know enough about human behavior. I do not think we know enough about the sociopsychological dynamics of sex that we can make that one issue the issue on which we would want to oppose this bill. I do not think we know enough to do that.

The Kinsey report of some years ago, and a more recent study about unusual sex practices between husbands and wives, reveal startling information. The point is that we do not know. If that is the center of opposition, and it is the wrong center of opposition because the bill does not do this at all, then I think that is unthinking behavior on the part of a Member or Members of this House who are being stampeded into action.

In Maryland we have a State song, "Maryland, My Maryland." A part of that State song goes, "The despot's heel is on thy shore, Maryland, my Maryland."

I say to you today, my colleagues, if we take action against the will of the District of Columbia, as represented

by its City Council, we are acting in a despot's manner. There is no if or but about it. There is no other way around it. We are doing exactly what my colleague, the gentleman from California said. We are saying to a group of people, "You are free to run your own government, but you must run it the way we want to run it. You must run it in absolute conformity to every demand of the Congress."

How can we agree to do that, we who are up in arms about the Soviets threatening other nations, we who are concerned about the Soviet presence in other nations, how can we condemn that kind of despot's behavior and at the same time, as the highest legislative body in this Nation, act in a despot's manner? I do not think we can.

I would respectfully suggest to the Members that this debate was necessary. People were up late last night. Their nerves are on edge today. The subject is sensitive and controversial, the areas that we deal with in this reform bill; but I am so glad we have taken the time to debate. I think during the course of this debate we will get rid of the stampede mentality that was demonstrated three times today and that we will have another opportunity for the House to forget all about the political security of its individual Members. That is what I think is the motivation for far too many Members, to forget about that, and to once again rise to the height of statesmanship that I believe this body is capable. I have seen it happen time and time again.

It is not easy. It is not easy. It would be the easiest thing in the world for me to say yes, I am with my colleague, the gentleman from Illinois (Mr. PHILIP M. CRANE). It would be the easiest thing in the world for me to follow a path of political expediency, but that is not why we are here. We are here for two reasons: one, to reflect the will of the people and the other to give some leadership to the people.

I would hope that the action proposed by my friend, the gentleman from Illinois (Mr. PHILIP M. CRANE) will be defeated. I would hope that after we have taken some time just to stop and think that we would reverse these earlier votes that took place.

I am not an expert in this area. I leave that to the members of the D.C. Committee and others who are interested. I am an expert in one thing. I am an expert in sensing when a legislative body acts in a fashion motivated by the highest principles of democracy and when it does not.

So it is up to this body. I am not going to tell anyone how to vote. It is up to each Member to make that decision.

I yield back the balance of my time. Mr. PHILIP M. CRANE. Mr. Speaker, I yield myself such time as I may consume.

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Mr. Speaker, in response to some of the commentary that we have heard, I would remind my colleagues that we have responsibilities in this body that we cannot abdicate under our Constitution. If one wants to talk in terms of an unlimited and unrestrained home rule in D.C., that cannot even be done statutorily. It would require an amendment to our Constitution, the repeal of article I, section 8.

I think in supporting my resolution that the Members of this body are exercising an appropriate and responsible authority.

Mr. Speaker, I yield such time as he may consume to my colleague, the gentleman from Michigan (Mr. SILJANDER).

(Mr. SILJANDER addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

Mr. DELLUMS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, just briefly I would like to suggest to the previous speaker—

Mr. CONYERS. Mr. Speaker, I make a point of order that a quorum is not present in the Chamber of the House of Representatives.

The SPEAKER pro tempore. The Chair will state that pursuant to clause 6(e) of rule XV, the Chair cannot entertain a point of order of no quorum at this time.

PARLIAMENTARY ENQUIRY

Mr. CONYERS. Mr. Speaker, a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state it.

Mr. CONYERS. Mr. Speaker, does not the Speaker have it in his power and his discretion to call a quorum when a point of order is put to the Chair?

The SPEAKER pro tempore. The Chair will inform the gentleman that the Speaker does not have that unilateral authority; however, the Chair may recognize a Member of the House to move a call of the House at his discretion.

Mr. CONYERS. Mr. Speaker, I move a call of the House.

The SPEAKER pro tempore. Without objection, a call of the House is ordered.

Mr. PHILIP M. CRANE. Mr. Speaker, I object.

The SPEAKER pro tempore. Objection is heard.

The question is on the motion offered by the gentleman from Michigan for a call of the House.

The question was taken; and the Speaker pro tempore being in doubt, the House divided, and there were—yeas 8, nays 10.

Mr. CONYERS. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

□1445

The SPEAKER pro tempore. The Chair will state this motion does not require a quorum. Therefore, a point of order is not in order on this motion.

Mr. DELLUMS. Mr. Speaker, I yield the gentleman from Connecticut (Mr. McKINNEY) such time as he may consume.

(Mr. McKINNEY asked and was given permission to revise and extend his remarks.)

Mr. DELLUMS. Mr. Speaker, I would ask my distinguished colleague from Connecticut if he would yield to the gentleman from California.

Mr. McKINNEY. I yield to the chairman.

Mr. DELLUMS. I thank my colleague for yielding.

I would simply like to make a couple of statements directed at the gentleman from Michigan (Mr. SILJANDER), the previous speaker in the well.

I would simply say to my distinguished colleague, No. 1, I listened very carefully to the statement the gentleman made. We are not asserting that we do not have the authority.

That would be absurd. The authority is clearly drawn in the act itself. The responsibility is something that we are not questioning because the responsibility flows from the authority.

The question that we are to be looking at is the gentleman's final point, the judgmental issue, and what this gentleman has, as diligently as he can, tried to say is that we understand that we have (a) the authority; (b) the responsibility, and based on that we must make a judgment.

What we are trying to say is what shall be the criteria that will determine that judgment. That is what is being discussed here, and that is where the three points of the gentleman from California come in.

Finally, I would say to my colleague that I am sure that the gentleman made the statement unwittingly, but the gentleman referred to a sandbox. Children live in a sandbox. This is a community of human beings, many of them are not children, and this gentleman would take objection to referring to the residents of the District of Columbia as living in a sandbox.

I would be very pleased if the gentleman from Connecticut would yield further so the gentleman could make a brief response, because I certainly wish the gentleman would strike that comment.

Mr. McKINNEY. I would yield to the gentleman from Michigan (Mr. SILJANDER) for a brief reply.

Mr. SILJANDER. Mr. Speaker, I will be brief in reply to the gentleman from California.

Please understand, my reference to a social sandbox, a social engineering sandbox, dealt with the issue that so many of these issues affect the young people. In no way was I interpreting or trying to suggest that all the adults in Washington, D.C., are, in fact, children. I am simply suggesting that the social engineers are using the District of Columbia too often. This is just one more case of using the children.

If the gentleman listened to my comments, I reiterated the word "children"

many times, literally using children as a social engineering sandbox. I do not appreciate it. I think all of us should be concerned with the young people, not just the adults, as well.

Mr. McKINNEY. If the two gentlemen would not mind, I will take back my time.

I think the chairman and the eloquent gentleman from Baltimore have probably said it all. But I suppose that I would be remiss in the 11 years of work I have put into this committee if I did not cover some of the points that have been brought up over, and over, and over again.

First, I think we ought to talk about the subject of basic human morality, not as it comes to the bedroom, which is the business of man and God, or man and church, or man and wife, but morality toward our fellow human beings.

When I came to this Congress, I considered that there was a part of our governmental structure which was an anachronism which was way past its time and which, in frankness, was an obscenity to the very idea of democracy. And that was the fact that the District of Columbia, which our forefathers, when they wrote the Constitution had never foreseen as becoming such a tremendous city, was disenfranchising 800,000-odd people from the right to determine how they were taxed or how they were governed.

It was made exceptionally the more heinous to me because we were in the midst of Vietnam, and this city had the highest percentage of men in its population fighting in Vietnam of any city in the United States of America except for Detroit. Yet not one person living here or sending their son to war or paying the taxes for that war, one of the greatest mistakes in this Nation's history, could have a word to say in either one of these Houses.

I committed myself, and I went to the minority leader and begged him to put me on the District of Columbia Committee—which is a rarity in this House of Representatives—so that I could help to abolish it. After he had picked himself up off the floor, he said he would be delighted to have a volunteer rather than following the age-old, wrist-breaking techniques of getting people to join the committee.

I dedicated myself to the idea that we were going to give the people of the District of Columbia what our forefathers said they would give every other American—the right to have their lives run by the people they elect to represent them; the right to have some judgment as to how their tax dollars were spent.

In 1974 this House saw fit to let them have a modicum of home rule. We, in effect, said that, yes, we have the responsibility under the Constitution; yes, we have the responsibility to protect the national interest, and the three points that we consider have been repeated over, and over, and over

again today. But, we said, in fact, times have changed, and we see a moral duty—and I remember listening to the speeches of letting the people of this city control their lives within the parameters of not affecting the Federal institution or violating the Constitution.

I remember day after day, with the gentleman who, unfortunately, has left this body, Brock Adams, sitting in the back of the room and saying:

Well, we are going to have to give the subsidies the guarantee that there won't be a nonresident income tax.

We did it.

We are going to have to give some of the people on Judiciary who worry about the idea that we will keep the courts.

We did it. We are going to have to do this, and we did it. And they are going to get a little nervous about oversight, so we will do something that we cannot do in any other committee of the U.S. Congress. We will allow one Member to discharge by motion and a majority is all he will need, whereas in any other committee in this Congress you have to—and I have tried to do it—bring 218 people to this desk in person during the working hours of the House of Representatives to sign a petition.

We did all of that to satisfy those who were frightened, to follow through on the moral commitment that we would let the people of this city govern themselves.

They have chosen to pass a law. The mere fact that it mentions sex seems to drive people up one end of the wall and down the other. I find myself consistently amused, standing here watching the people vote from various States, where their State representatives, the representatives of the people of that sovereign State, in 25 cases passed legislation exactly like this. Woe unto you if you should sin in Washington or Virginia; just drive over the border into Maryland. Or if you want a particular different sin, try New York or New Jersey.

The issue is legislators of sovereign people representing those people, at which point they would not be there if they hadn't said, "This is what we want for our people."

How can we go back on our moral commitment of the early seventies and say "No." We did it only once in the chancery case. That was a matter of pure Federal interest, even though some disagreed on that. We did not feel that the City Council could tell the State Department where a chancery could go. A fine line, but a Federal interest, obviously.

But now we are talking about an issue that is totally involved with the private lives of the people of this city.

In this city, 94 organizations have signed on to back this bill. They run the gamut from the National Conservative Political Action Committee, sometimes referred to as NCPAC, to the National Coalition Against Sexual Assault, the League of Women Voters,

the District of Columbia Commission on Human Rights, the Central Labor Council, the American Federation of Government Employees, Self-Determination For District of Columbia, Americans for Democratic Action, National Capital Union Presbytery, the Downtown Cluster of Congregations, 12 churches, and so forth.

These are not churches who are endorsing sex. They are not endorsing homosexuality. They are not endorsing deviant behavior. They are endorsing the right of the majority of the people of the District of Columbia to judge and rule and govern themselves.

Several of my colleagues on this floor have said, "Well, we have a responsibility, we have a right to veto legislation, we have a right to say what we feel." I agree. And we have a right to say it and do it here. But I think that under the moral commitment that we make, it would be more proper if this expression of deep concern for the morality of the people of this city had been done in any of the extensive public hearings in your neighborhood or mine. Or if one lived in the suburbs, one could have gone at night down to the City Council Chamber and testified, as a U.S. Congressman, as to your concern about the image of the Capital and not wanting this to happen.

They would have listened. One does not have to be a voter to appear in front of the City Council. I have appeared in front of the Council because that is where I should appear if I am going to try to interfere with the process, the governing process in the District of Columbia.

I think it was said very well by an editorial in the Washington Post:

Now comes Rev. Jerry Falwell and the Moral Majority to ask Congress to veto a new District law on sexual activities because it is, Mr. Falwell says, "perverted." He anticipates that some objection might be made to his request for Congress to intervene in local affairs, and he said that home rule does not include the right to legalize decadence. Mr. Falwell is being joined by some local supporters, including the Baptist Ministers' Conference.

The merits of the legislation that Reverend Falwell opposes need not be argued—again—here. It is enough to say that local attention to the bill resulted in trimming certain sections from it, notably . . .

And it goes on and on and on, and it turns out to say:

Mr. Falwell's views would have been appreciated before the City Council. There are local residents who agree with him. Asking Congress to undo what locally elected officials have decided is best for the city, however, is to wreck the delicate balance of home rule.

Mr. Speaker, I ask unanimous consent to enter into the Record, with these remarks, the section-by-section analysis of the bill, the listing of organizations supporting this legislation, plus the editorial that I just quoted from.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Connecticut?

There was no objection.

The material referred to follows:

SECTION-BY-SECTION ANALYSIS

Section 1 indicates that the short title of this act is the "District of Columbia Sexual Assault Reform Act of 1981".

Section 2 lists the definitions to be used in the act.

Section 3 defines sexual assault in the first degree, the most serious of the sexual assault offenses. It is a crime punishable by imprisonment of up to twenty years.

Section 4 sets out the offense of sexual assault in the second degree, a crime punishable by ten years of imprisonment.

Section 5 sets out the crime of unlawful sexual acts with a younger child. The penalty is up to twenty years paralleling the first degree sexual assault penalty. This section aims to protect the very young child from sexual abuse, while allowing for some sexual experimentation between persons very close in age. The age of the perpetrator could not be more than two years older before a sexual act with a child below twelve would trigger the provisions of this act.

Section 6 defines and sets out the penalty for unlawful sexual acts with an older child. An older child is defined as being between twelve and fifteen years of age. A person who engages in a sexual act with a child between the ages of twelve and fifteen who is at least four years older is subject to the ten year penalty, if found guilty.

Section 7 defines unlawful sexual act with a Ward and carries a five-year penalty. This provision would penalize a person who has a position of responsibility for, or a family or guardianship relationship to a child who uses that position as leverage to have sex with a minor under the age of eighteen.

Section 8 sets out the definition and punishment for Unlawful Sexual Acts with an inmate or patient and would establish a penalty of up to five years for the offense.

Section 9 sets out Sexual Contact in the First Degree and establishes the penalty at three years. Sexual contact is defined as compelling a person to participate in or submit to a sexual contact, which is specifically defined according to the bodily parts that are touched.

Section 10 sets out Sexual Contact in the second degree and establishes the penalty at one year or \$1,000.00 or both for this offense.

Section 11 provides that the court may give an added penalty of up to one and one half times the maximum penalty if the perpetrator is a parent, grandparent, aunt or uncle of the victim.

Section 12 provides that no child under age 18 may be prosecuted as an adult for any crime included in this act, except for sexual assault in the first degree.

Section 13 is the repealer section. The following sections would be repealed: forcible rape and carnal knowledge; false charges of unchastity; seduction and seduction by a teacher; adultery; incest; indecent acts with children, except for section (b) relating to enticing or luring children to a place to take indecent liberties; and fornication.

Section 14 is the amendatory provision. Generally, current statutes that use the words rape or carnal knowledge would be amended to conform to the new language of the act.

ORGANIZATIONS EXPRESSING WRITTEN SUPPORT FOR DISTRICT OF COLUMBIA ACT 4-00, SEXUAL ASSAULT REFORM ACT OF 1981

D.C. League of Women Voters.
National Women's Political Caucus.
Women's Equity Action League.
Jewish Community Council.

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American Civil Liberties Union.
D.C. Commission for Women.
Rape Crisis Center.
National Coalition Against Sexual Assault.
Child Advocacy Center.
Women's Legal Defense Fund.
District of Columbia Chief of Police.
Children's Hospital Child Protection Center.
D.C. Health Coalition.
Libertarian Party.
D.C. Commission on Human Rights.
Greater Washington Central Labor Council—AFL-CIO.
Downtown Cluster of Congregations (12 churches).
National Institute for Women of Color.
Council 36/AFSCME.
American Federation of Governmental Employees.
The Gray Panthers.
The Feminist Law Collective.
Self-Determination for D.C. (54 organizations).
Americans for Democratic Action.
D.C. Common Cause.
National Capital Union Presbytery.
International Association of Machinists and Aerospace Workers.
American Bar Association.
United Church of Christ—Office for Church in Society.
National Conservative Political Action Committee.

(From the Washington Post, Sept. 13, 1981)
JERRY FALWELL COMES TO TOWNS

Now comes Rev. Jerry Falwell, the Moral Majority's leader, to ask Congress to veto a new District law on sexual activities because it is, Mr. Falwell says, "perverted." He anticipates that some objection might be made to his request for Congress to intervene in local affairs, and he says that home rule does not include the right to legalize decedence. Mr. Falwell is being joined by some local supporters, including the Baptist Ministers' Conference.

The merits of the legislation that Rev. Falwell opposes need not be argued—again—here. It is enough to say that local attention to the bill resulted in trimming certain sections from it, notably a provision lowering the age of consent for teenagers involved in sexual activity. As it stands now, the bill decriminalizes only homosexual acts and sodomy between consenting adults. This is what the city council and mayor approved, after much public outcry about the bill. Mr. Falwell is not shining a light on obscure legislation that lawmakers would sneak past District residents.

It is noteworthy that Mr. Falwell did not address his objections to the city council when it was considering the bill or to Mayor Barry before he signed it. Mr. Falwell's focus is on Congress. His interest in this legislation, he admitted, is based on the fear that it might be a model for other cities. That is why he has asked Congress to override the law by passing two other bills.

Mr. Falwell's views would have been appreciated before the city council. There are local residents who agree with him. Asking Congress to undo what locally elected officials have decided is best for the city, however, is to wreck the delicate balance of home rule. The D.C. government operates with a caution born of full knowledge that Congress can wipe out any local law or decision it finds undesirable. Congress has so acted before, mainly in cases it thought directly affected the federal interest. To have Congress begin taking action on a local matter now would make home rule a charade and would take away much of the

city's limited claim to democratic rule. Congress, in its diplomatic way, should show Mr. Falwell the way to the District Building as it shows him and his proposal the way out.

Mr. LIVINGSTON. Mr. Speaker, will the gentleman yield, and will the gentleman from California (Mr. DELLUMS) give the gentleman some additional time so I might ask the gentleman a few questions about this particular bill?

Mr. DELLUMS. Will the gentleman yield to me?

Mr. McKINNEY. I would be delighted to yield.

I would like to say to my other friend, the gentleman from Louisiana (Mr. LIVINGSTON), not being a lawyer, do not make them too legal.

Mr. DELLUMS. I would like to suggest to my distinguished colleague in that well that if the gentleman is seeking time and the gentleman is on the other side of the issue, I would appreciate it very much if the gentleman would receive the time from the gentleman from Illinois (Mr. PHILIP M. CRANE).

Mr. McKINNEY. If my chairman would yield for just a moment, perhaps the gentleman from Illinois (Mr. PHILIP M. CRANE) can give me a minute or two.

Mr. PHILIP M. CRANE. If the Speaker will permit, I would like to yield to the gentleman from Louisiana (Mr. LIVINGSTON) such time as he may consume for the colloquy with the gentleman in the well.

□ 1500

The SPEAKER pro tempore. The gentleman from Louisiana (Mr. LIVINGSTON) is recognized for 2 minutes.

Mr. LIVINGSTON. Mr. Speaker, I thank the gentleman for yielding. It may be that I might ask the other side of the aisle to yield to me as well, because frankly I am right in the middle of this thing. I have been listening to the debate with great attention, and I am a little bit concerned about the issue. I have been watching it; I have been talking to people, anticipating that this was coming up.

As a former prosecutor for some 6 years and a lawyer for 9 years, I am not here to defend any of the modes of conduct that are being chastized or castigated by this bill, or which are being reformed by the bill that is before the District of Columbia Council. But I am concerned that, in the rush of some degree of emotionalism, perhaps many Members of Congress are not aware of what is actually in the D.C. Act 4-89. As a matter of fact, I had to try very hard to get a copy of this bill. I now have one. I have read it through several times, and I am under the impression that it might not be available to very many Members of Congress.

And so I looked at it, and while I realize that there may be some failure in the bill to speak out against homosexuality, for example, it does not in my

reading of it—and perhaps the gentleman from Illinois might wish to comment on this—it does not in my reading make legal any public displays of homosexuality or any lewd or lascivious conduct. Would the gentleman like to enlighten me on that point?

Mr. PHILIP M. CRANE. Yes, I would. Under the repealer provisions, that is, section 13 of the D.C. bill, among other provisions of the D.C. Code that are repealed are 22-3001, for example, deals with the question of seduction.

The SPEAKER pro tempore. The time of the gentleman from Louisiana has expired.

Mr. PHILIP M. CRANE. Mr. Speaker, I yield two additional minutes to the gentleman from Louisiana.

Section 22-3001 reads:

If any person shall seduce and carnally know any female of previous chaste character, between the ages of sixteen and twenty-one years, out of wedlock, such seduction and carnal knowledge shall be deemed a misdemeanor . . .

That provision of the D.C. Code is specifically repealed in section 13 of the D.C. Council's bill under consideration. There are others also, including the one alluded to earlier dealing with the alteration of the penalties for rape.

There are, in fact, several different provisions that have been repealed. So, in reading the bill it is not that one can find what are offensive references. One has to go to the existing D.C. Code and find out what is being repealed, and thus in effect is being decriminalized.

Mr. LIVINGSTON. I understand the gentleman's point, but my point is, in fact, that section 9(a) on page 12 of the enrolled version of the bill provides that obscenity in public is a 90-day misdemeanor and actually is subject to a 1 year term of imprisonment if involving a minor. Now, the point is that public obscenity is still illegal in this bill, and to say that there is no violation for such an offense is simply not correct.

Mr. PHILIP M. CRANE. If I can reclaim the time for just a second on that point, I am not addressing the question of public obscenity. I am talking about decriminalizing the seduction of what is defined as a minor. I would like to ask my colleague from Connecticut in what connection, was he attempting to suggest that the State of Maryland has decriminalized the seduction of a minor?

Mr. LIVINGSTON. If I could reclaim my time on this particular point, and the gentleman has been kind enough to yield to me—

The SPEAKER pro tempore. The time of the gentleman from Louisiana has again expired.

Mr. PHILIP M. CRANE. Mr. Speaker, I yield 2 additional minutes to the gentleman from Louisiana.

Mr. LIVINGSTON. I checked with volume 8, No. 3, 1979 edition of Family

Planning/Population Reporter. It indicates that the age of consent in Maryland is 16, and that the age of consent in Virginia is 14; and that all this Act 4-69 revision by the Council of the District of Columbia does is to conform to the surrounding law in making the age of consent the same as that of surrounding States. What is wrong with that?

Mr. PHILIP M. CRANE. Is the gentleman referring to the age of consent? Is he talking about marriage?

Mr. LIVINGSTON. No. I am referring to, generally speaking, the age of consent with reference to sexual crimes. If the gentleman would yield further, I would be happy to read him the exact provision in Maryland:

It is illegal for anyone to have carnal knowledge of any female under 14; lesser crime for anyone 15 or older to know carnally any female between 14 and 16; illegal for any female over 18 to know carnally any male under 14.

So, the age of consent in Maryland for such a crime is 16 and in Virginia, without reading it, I would say it is 14. I am trying to understand for my own purposes what is wrong with this bill that is not wrong with the provisions of the law that exist in Maryland or Virginia.

Furthermore, I would comment on the rumors that are going around in his House. Someone told me that this bill legalizes or decriminalizes incest. Yet, my review indicates that section 6 makes an 8-year felony for incest.

And, what is wrong with the testimony of the women's rights organizations who appeared before the D.C. Council? As I understand it, they proclaimed that sentence of life imprisonment for rape dissuaded most people from convicting a person for rape where a woman testified against a man, and they believed that while the man might deserve a life penalty, the jury might be more inclined to convict if the maximum sentence were defined in terms of not more than 20 years. I suggest that a reduced sentence is better than no conviction at all.

The SPEAKER pro tempore. The time of the gentleman from Louisiana has again expired.

Mr. PHILIP M. CRANE. Mr. Speaker, I yield 1 minute to the gentleman from Connecticut (Mr. McKINNEY) to respond to an earlier question.

Mr. McKINNEY. Mr. Speaker, I would just like to respond just to clarify the record for the gentleman from Illinois in that I was merely trying to show that in any one of these issues, they move from State to State to State. What it really is, is the will of the people in those areas that have built that set of rules, and the same rules should be allowed to take hold in Washington, D.C.

Mr. DELLUMS. Mr. Speaker, I yield 2 minutes to my distinguished colleague from Louisiana (Mr. LIVINGSTON).

Mr. LIVINGSTON. Mr. Speaker, I appreciate the gentleman yielding. I

will simply sum up. I have gone through this bill extensively, and I am concerned again that the Members of the House of Representatives simply have not taken the time to look at District of Columbia Act 4-69. If they were to do that, they would realize that many of the rumors that have been promulgated about this particular act are not as valid as they think.

I have to say that I have been labeled as a conservative. I am an prosecutor, and I am not trying to defend homosexuality, incest, or any other deviation of mankind, but what I am trying to say is, let us not run away with the emotionalism of the hour, but carefully consider if we want to overturn an act which appears to have been rationally considered by a capable, deliberative body within the District of Columbia.

Mr. DELLUMS. I thank the gentleman for his enormous contribution to these proceedings.

The SPEAKER pro tempore. The gentleman from Illinois (Mr. PHILIP M. CRANE) has 30 minutes remaining, and the gentleman from California (Mr. DELLUMS) has 22 minutes remaining.

The Chair recognizes the gentleman from Illinois.

Mr. PHILIP M. CRANE. Mr. Speaker, I would like to yield such time as he may consume to my colleague from Utah (Mr. MARRIOTT).

Mr. MARRIOTT. Mr. Speaker, I thank the gentleman. I rise with the utmost respect for my friends from California, the District of Columbia, and Maryland, and find this to be a very interesting subject. I have listened intently to them for the most part of this debate.

I would like to make just three points, and then enter into a colloquy, if I could, with the gentleman from California. First of all, we seem to have gotten carried away on the basic question, but that in this resolution we have been discussing home rule. It appears to me that there is not unlimited self-government in the District of Columbia; that in fact there is limited government at best.

As I read section 601, it appears to me that Congress does have the authority, if I could read it, "to exercise its congressional right and authority as legislature for the District by enacting legislation for the District on any subject, whether within or out of the scope of legislative powers granted to the Council by this Act."

That means, I assume, we have authority to amend, to repeal, to do anything we want with any decision that comes from the Council.

The gentleman from California set down three criteria that I would like to just address briefly. He indicated that unless the Council's decision violates the Constitution or violates home rule or obstructs the Federal interest, then we ought not to be involved in discussing the issues. I would like to just make the point that I

think many Members of the House, including this gentleman, believe that perhaps this decision does in fact obstruct Federal interests.

Let me just make a point that has been made before, but I would like to reiterate it. First of all, Washington is not just another city. It is in fact a rather unique city. It is the Nation's Capital and it belongs to all the American people, some 230 million—not just the 600,000 that we have been discussing for several hours today. It is in fact a visible city, and I think that if there ought to be some standards in this country, that maybe Washington, D.C., ought to set those standards. The fact that other cities may have laws that are anything but becoming is not the point, and I think that this country has declined morally in many States as well as in the Capital City.

There is a large concentration of Federal employees here and they have an interest as well in the criminal statutes. I suppose that decriminalization in the District of Columbia does have some kind of a spillover into Virginia and Maryland. The case was made by the previous speaker that all we are doing is bringing the laws in Washington, D.C., in line with the laws of Virginia and Maryland. That is not the way I read it as I look at the statistics.

Maybe the gentleman from California would dispute this if it is not correct. According to this handout I have received from the Delegate from Washington, D.C., Mr. FAUNROY, Virginia and Maryland both have laws against adultery, laws against fornication, and laws against sodomy. The Council's decision, by a vote of 13-0, as I read it, liberalized homosexuality and sodomy if consenting adults are involved. Second, it repeals the 1- and 2-year penalty for adultery and fornication. That does not look to me like that is in line with the Virginia or the Maryland law, and I would like to have a comment on that.

The final point I want to make is that if in fact the House has voted that we do want to make our position known on this issue, regardless of how we interpret home rule, the question then is, that has not been addressed today, is this: Has the Council liberalized the moral standards of the city? If this in fact is a Federal city, then we ought to be concerned on behalf of all Americans.

What about the decisions of the Council? Have they in fact liberalized homosexuality and sodomy? Have they in fact liberalized adultery and fornication? Have they in fact limited sentences on rape? It seems to me if there is a 20 year maximum or a 20 year sentence, which is a maximum sentence, the average rapist may well serve only 1½ or 2 years and be back on the street.

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□ 1815

Have they in fact legalized the seduction of children under the age of 18?

Well, I have never received in any of this debate today any clear answer to those questions, and I contend that many Members of the House have gone beyond the procedural question and are concerned, now that we have gotten to this point, and are asking, how bad is this new law that the Council has perpetrated upon us?

If the law is a good one, I would stand with the gentleman from California (Mr. DELLUMS), but if in fact it has liberalized the law to the point that we cannot accept it, then I have to take a different course.

I might just mention in conclusion that one great statesman some years ago said that no nation can be great unless that greatness is built on the foundation of morality and decency. So I do not think any State or any Federal district has the right to lessen the laws that might promulgate more problems than we have now.

Mr. Speaker, I would like to yield to the gentleman from California (Mr. DELLUMS) or the gentleman from Michigan (Mr. CONYERS) and just discuss for a moment the decision of the Council itself and how bad the law is. Mr. DELLUMS. Mr. Speaker, I suggest that the gentleman first yield to the gentleman from Michigan (Mr. CONYERS).

Mr. MARRIOTT. I yield to the gentleman from Michigan.

Mr. CONYERS. Mr. Speaker, I thank the gentleman for yielding.

I would like to very quickly read to the gentleman a few sentences that I think answers one of the major questions—one among a number of them—that he has raised.

Does this legislation effectively remove all sanctions against homosexual conduct in the District of Columbia? I have heard the gentleman refer to that continually.

It not only does not do that; it increases the prohibitions. I emphasize this to my colleague. The penalty for forcible homosexual activity is doubled under this law.

Mr. MARRIOTT. I understand that to be the case, but I have another question.

Mr. CONYERS. Is the gentleman opposed to that?

Mr. MARRIOTT. No, absolutely not. But I would ask this question:

What is the law in Washington, D.C., now regarding homosexuality and sodomy among consenting adults? What is the law in that regard?

Mr. CONYERS. Mr. Speaker, if the gentleman will yield, let me put it in just three sentences.

Mr. MARRIOTT. I understand what the gentleman said before. I understand what he said, that for forced situations they have doubled the penalty, but what have they done to the adult consenting situation? Has that

been liberalized, or is the penalty different?

Mr. FAUNTROY. Mr. Speaker, will the gentleman yield?

Mr. MARRIOTT. I yield to the gentleman from the District of Columbia.

Mr. FAUNTROY. Mr. Speaker, the law of the District of Columbia is the same in that regard. I will say to the gentleman, as it is in 40 other States.

Mr. MARRIOTT. It is the same now or it will be the same when this bill passes?

Mr. FAUNTROY. When this bill passes, it will be the same as it is in 40 other States.

Mr. MARRIOTT. So in fact they have liberalized those laws to comply with 40 other States?

Mr. FAUNTROY. We have conformed with 40 other States of the Union; yes. And as I suggested earlier, if we want to bring in a national law to apply to all of the States, I would certainly recommend that the gentleman do that, and perhaps that would be the proper approach.

Mr. MARRIOTT. I understand that, but the point I am making is that they have liberalized that law in comparison to what it was.

Mr. FAUNTROY. We have in effect centralized it in that we have conformed to what 40 States in their considered judgment have felt should govern the situations in their communities.

Mr. CONYERS. Mr. Speaker, will the gentleman yield for a moment?

Mr. MARRIOTT. I am glad to yield to the gentleman from Michigan.

Mr. CONYERS. Mr. Speaker, I asked the gentleman to yield because I think we have a 50-percent agreement. The gentleman applauds the new law that doubles the criminal penalties against homosexuality, but he deplores that part of this law that makes in noncriminal for consenting adults; is that correct?

Mr. MARRIOTT. To be involved in homosexual activities, that is correct.

Mr. CONYERS. Yes. We have come to agreement 50 percent of the way.

Mr. MARRIOTT. But then the gentleman takes it away.

Mr. PHILIP M. CRANE. Mr. Speaker, will the gentleman yield?

Mr. MARRIOTT. I yield to the gentleman from Illinois.

Mr. PHILIP M. CRANE. Mr. Speaker, we have heard the reference to the 40 States that are in agreement. According to the factsheet—and this was contributed by our distinguished colleague, the gentleman from the District of Columbia (Mr. FAUNTROY)—outlining the State criminal code penalties of the 50 States, I only count 25 States that have decriminalized sodomy among consenting adults; is that correct?

Mr. FAUNTROY. Mr. Speaker, if the gentleman will yield, as we indicated, we conform generally to 40 other States, and I will stand corrected on 25. We agree with half the States of the Union.

Mr. MARRIOTT. Mr. Speaker, if I may reclaim my time, let me just make the point that under the present recommendations by the Council, they would be substantially more liberal in Washington, D.C., than they would be in Maryland or Virginia; is that not the case? That is the case, as I understand it.

There is one other question I would have for the gentleman from California, and that is on section 11. Perhaps I am reading it wrong, but it appears to me that this law says, on the prosecution of persons under the age of 18, no person under age 18 may be prosecuted for crimes under this act except for the crime of sexual assault in the first degree.

Now, would the gentleman interpret what that means? Does that mean that on all these other cases, we cannot prosecute minors?

Mr. DELLUMS. Mr. Speaker, will the gentleman yield to me?

Mr. MARRIOTT. I yield to the gentleman from California.

Mr. DELLUMS. Mr. Speaker, the gentleman indicated that he was addressing a question to the gentleman from California.

The position of the gentleman from California is abundantly clear on the floor of this Congress. I shall not, will not, and do not at this time engage the gentleman or anyone else on this floor on the substantive question of the law that was enacted by the City Council, because it is the position of this gentleman that this is wholly inappropriate and not correctly before this body.

We are not at this moment a court of competent jurisdiction on this question, and it seems to me that at this moment this debate has achieved the level of absurdity. I underscore that point. It is not the question at this point, and we ought not to be addressing those issues.

I stated to the gentleman that it is the position of this gentleman that if we are going to entertain this matter, it ought to be in the framework of the three points we established. If I do not have that assurance, I should not be making a statement, and I shall not then step outside those three criteria. I will go down in flames on that point.

Unless the gentleman will propound his question in the framework of the three criteria, I will not dignify it with an answer to his response. The point is that I had a 30-minute debate with my colleague, and I stated unequivocally what the position of the gentleman from California was on this matter. I cannot reply in debate or discuss in detail or at any length the provisions or sections of the District of Columbia Act 4-89, unless we believe it is unconstitutional or it violates the Home Rule Act or it is an obstruction of the Federal interest, and the gentleman from Utah has not made a point in any of those areas.

Mr. MARRIOTT. Mr. Speaker, if I may reclaim my time, I think I at least

tried to make the case that some of us are in doubt that this question of obstructing the Federal interest has been dealt with. I think that article 1, section 4, paragraph 601, gives the authority to deal with the question.

Mr. DELLUMS. Mr. Speaker, will the gentleman yield further on that.

Mr. MARRIOTT. That is my position, and as long as I, along with other Members of the House, believe there are some possible Federal interests involved, I think that is what this debate is going to come down on. I contend to the gentleman that most Members of the House, I think, would agree with that, and that is why this Chamber is empty today, because their minds have been made up on this issue.

Mr. DELLUMS. Mr. Speaker, will the gentleman yield?

Mr. MARRIOTT. I yield to the gentleman from California.

Mr. DELLUMS. Mr. Speaker, first of all, let me repeat for the umpteenth time that we are not here challenging whether we have the authority. That is clearly in the law. We are not suggesting that we have the responsibility. Responsibility flows from the authority in the act.

The only question is, what is the criteria we have established to carry out our judgment with respect to what we do in these areas?

Mr. Speaker, that is the point we have been debating in this regard, and the gentleman from California has made his position abundantly clear to every Member on the floor of this House.

Mr. MARRIOTT. That is the procedural question.

Mr. DELLUMS. This is more than procedural; that is conceptual.

Mr. MARRIOTT. Mr. Speaker, I simply say that there is a possibility that this legislation obstructs the Federal interest, and that is one of the criteria. That is the point on which I am hanging the statement that I make today.

Mr. DELLUMS. Mr. Speaker, the gentleman makes his statement on the obstruction of Federal interest. I listened carefully to the debate, and he has not made his argument. He has asserted his case, but he has not made the argument.

Mr. MARRIOTT. How can we? I say that because you have not discussed the particular legislation that was passed by the Council. To me, that is where the issue hangs.

Does the legislation that the Council passed have a tendency to obstruct the Federal interest? Some of us claim that it does.

Mr. Speaker, I yield back the balance of my time.

Mr. DELLUMS. Mr. Speaker, may I inquire as to the amount of time remaining on this side?

The SPEAKER pro tempore. The Chair will state that the gentleman from California (Mr. DELLUMS) has 22 minutes remaining, and the gentleman

from Illinois (Mr. PHILIP M. CRANE) has 15 minutes remaining.

Mr. DELLUMS. Mr. Speaker, I yield such time as he may consume to the gentleman from the District of Columbia (Mr. FAUNTROY).

Mr. FAUNTROY. Mr. Speaker, during the course of our proceedings today I have raised objection to the efforts to discharge the committee from its properly exercised responsibility to consider House Resolution 208, and we failed. Arguments on the floor on the question of home rule have been eloquently put, and while I did not choose that we should resolve ourselves now into the committee or the Council of the District of Columbia to consider the substance of D.C. 4-69, we are here, and I want to thank the gentleman from Louisiana (Mr. LIVESTRONG) for at least raising questions about the substance of this legislation.

As I indicated at an earlier time, had the Members of this Congress been with the City Council when it held hearings on this measure, it would know that we had been provided with considerable fiction as to what in fact this act does, and this debate afterwards gives us at least some opportunity to replace that fiction with fact. The fact is that many Members are not on the floor of the House today and have closed their minds because they have been led to believe that this act repeals the statute under which one colleague of ours was arrested in the Longworth Building. That is not true.

They are under the impression that this statute effectively removes all sanctions against homosexual conduct in the District of Columbia. That is not true; that is fiction. The fact is that the act, as the gentleman from Michigan (Mr. CONYERS) has indicated, does not eliminate all prohibitions against homosexual conduct. Indeed the act increases the prohibition. The penalty for forcible homosexual activity is doubled.

The District law on prostitution is amended to prohibit homosexual as well as heterosexual practices. The laws prohibiting statutory rape have been expanded to prohibit sexual conduct, including homosexual conduct with boys as well as girls, whereas it now only protects young girls from sexual abuse. Further, regarding the law against homosexual public conduct, that remains in force.

The Members need to understand that section 22-3502 of the D.C. Code would be repealed by the proposal. Section 22-3502 provides a 10-year maximum penalty for certain sexual conduct when applied to heterosexual as well as homosexual activity. Indeed it applies to conduct by and between married parties carried out in the privacy of their bedroom. The context of other laws remain on the books and will be on the books. The only prohibition removed by this repeal is that applying to adult, consensual, private, noncommercial activity. While that

conduct could be homosexual in character, most of it is heterosexual, and much of that is between married people.

Members of this Congress have been led to believe that this law would repeal statutes prohibiting adultery and fornication. The bill does not remove all sanctions regarding adultery and fornication. Adultery remains a consideration in the child custody and property disposition aspects of divorce cases, as does fornication in paternity cases. What is repealed is the 1-year maximum criminal penalty for fornication and the 2-year maximum penalty for adultery.

It has been suggested that this law reduces the penalty for forcible rape from life imprisonment to 20 years in jail. That is in fact true. But had the Members of this Congress sat as a city council, as did those who were elected sat, they would know that every single woman's group that is concerned about forcible rape that testified urged that this be done because of the fact that the present law discourages the conviction and sentencing of those who have committed these heinous acts.

Had the D.C. Commission on Women had an opportunity to testify before this Congress, had the Rape Crisis Center or had the Women's League Defense Fund, or had the D.C. State, Federal, Business and Professional Women's Club had an opportunity to testify before this Congress, they would have urged us that for the protection of women in our Nation's Capital, what the city council has in fact done is to set a 30-year sentence that will see to it that judges and prosecutors and juries will not be shy about convicting persons guilty of these heinous acts.

I could go on, Mr. Speaker, but let me say that I, as the Members know, am a resident of the District of Columbia, and I represent the people of the District of Columbia in this forum. I also participate in major policy debates in the city and among the people of the city, and I vigorously urge the adoption of my personal view. My views are not always accepted. However, once the people have made their choice by initiative or by referendum, and through their elected officials, I have always respected that choice. It seems to me that that is the democratic process, and to do otherwise suggests that justice, equality, and fair play in an orderly society are mere rhetoric that we use with respect to the citizens around the country but not with respect to the citizens of the District of Columbia.

So I would urge my colleagues to take a close look at what the City Council has in fact done and to ignore—I will not call them "lies," because lies are told with the deliberate intent of deceiving, and I do not accuse those who have told Members of this Congress that if they vote to

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sustain the committee on this question, they are voting to legalize homosexuality and eliminate penalties for sodomy, of lying, because they are not lying.

□ 1530

I would rather suggest they are acting out of ignorance of what, in fact, the law does. Had the women who testified before the committee and had the prosecutors testified before the committee and the general counsel of the police department who testified in favor of these measures had an opportunity to speak to the City Council here assembled, then perhaps we would be as enlightened as were the members of the Council who passed this, and as was the committee from which this measure has been discharged, who listened to a small measure of testimony with respect to the substance of this act.

The final question, therefore, is: Are we to say to the American people and, indeed, to ourselves, that we have no second-class citizens in this country except those who live in the District of Columbia, and we have one-man one-vote for all Americans, except those of us who live here and the citizens of the District of Columbia have no right that the citizens of this country are bound to respect? That is the ultimate home rule question. But while we act on that in the judgment which will be taken on this measure, I hope that we would act intelligently and informed and not from ignorance and having been misled.

Mr. CONYERS. Mr. Speaker, will the gentleman yield?

Mr. FAUNTROY. I am happy to yield to the gentleman from Michigan (Mr. CONYERS).

Mr. CONYERS. I just want to commend the gentleman from Washington, D.C. His legal interpretation about the effect of the broadening of the ability to prosecute under this new proposed District of Columbia law is absolutely correct. I applaud the gentleman's very clear description.

Mr. FAUNTROY. I thank the gentleman.

Mr. FRITCHARD. Mr. Speaker, will the gentleman yield?

Mr. FAUNTROY. I yield to the gentleman from Washington (Mr. FRITCHARD).

Mr. FRITCHARD. I want to compliment the gentleman and say he has made a very clear case. I think he has hit right on the issue.

As far as whether people are here or listening or they have already made up their minds, I think the gentleman and I both know that this is a very easy vote. It is a cheap vote to give the Moral Majority, and one that does not affect your home district, and you would just as soon not have somebody beating you over the head in the next election when there are a lot of Members on the Hill that are just taking a duck on this one. I am sorry, but I do

support the gentleman and I think he has made a very clear case.

Mr. FAUNTROY. I thank the gentleman.

Mrs. FENWICK. Mr. Speaker, will the gentleman yield?

Mr. FAUNTROY. I yield to the gentleman from New Jersey (Mrs. FENWICK).

Mrs. FENWICK. Mr. Speaker, I am not speaking to the points that have just been raised by the previous speaker. I think we all feel in this House that we must uphold morality and standards of honor and justice.

But my own State of New Jersey has laws that are remarkably similar to the ones that are being proposed and have been agreed to by the committee, and have been proposed by the Council. My own view is that these acts that are described are reprehensible, deplorable, and saddening.

However, that which takes place in private between consenting adults is nobody's business. It is an invasion of privacy.

At one time in New Jersey we even had laws concerning relations between married couples. People can go so far to invade the privacy of others.

However, I would certainly not vote as I have, except that I understand that this law proposed by the council is concerned about behavior in public and that public lewdness and lascivious behavior will not be tolerated in this city and should not be tolerated in this city.

I am happy to see that it is going to be a 90-day sentence or a year if that lewd and obscene behavior involves a minor. That, I think, is a sound difference between invasion of privacy and debasement of society.

Mr. FAUNTROY. I thank the gentleman.

Mr. PHILIP M. CRANE. I have no further requests for time, and I reserve the balance of my time.

Mr. DELLUMS. Mr. Speaker, I yield 4 minutes to the distinguished gentleman from California (Mr. DYMALLY).

Mr. DIXON. Mr. Speaker, will the gentleman yield?

Mr. DYMALLY. I yield to the gentleman from California.

(Mr. DIXON asked and was given permission to revise and extend his remarks.)

Mr. DIXON. Mr. Speaker, the gentleman from Illinois (Mr. PHILIP CRANE) stated that his disapproval resolution does not violate the concept of home rule because language restrictions are often times attached to the annual appropriation bills for the District of Columbia. He went on to cite examples such as the provision prohibiting the use of funds to implement a hiring system that uses a drawing to rank prospective police officers and firefighters who pass the written test; the restriction on the transfer of sludge outside the District of Columbia; and the denial of funds for the local gambling board.

Let me make it very clear, Mr. Speaker, that certainly Congress can and does place restrictions on the use of funds, but there is really no comparison between restrictions on the use of money and the disapproval of a local ordinance which has been approved by locally elected Officials. Let me explain why.

With respect to the police and fire hiring policy, the language placed in the appropriation bill does indeed prohibit the city from implementing the system of a drawing to determine the selection order of those who pass the written test. But this system was put in place as an administrative matter by the Mayor with the City Council's consent. It did not go through the lengthy process which gives all those who wish a chance to be heard on an issue and results in an ordinance that comes from those most directly involved.

On the second issue, the House merely provided a temporary 60-day delay in the transporting of sludge to a new landfill. That is much different than completely turning around a statute that has been debated and approved by the local legislature and chief executive. Concerning the gambling board, there was no language in the appropriation bill prohibiting the use of funds for implementing the gambling initiative. The House did absolutely nothing on that proposal.

So the gentlemen's argument that his disapproval resolution does nothing more than what is done through language on appropriation bills is spurious and not supported by the facts. Let me say at this point, Mr. Speaker, that even though language provisions are included on appropriation bills, many Members feel that it is wrong for the Congress to dictate how the local government should spend revenues which, for the most part, are raised from taxes, fees and charges imposed on local residents.

Mr. Speaker, I realize this is an emotional issue and that many of the points in D.C. Act 4-69 may not have been fully explained. And although the Congress has the authority to place language in an appropriations measure that limits the use of funds or delays an effective date, there can be no question in anyone's mind that such language provisions are entirely different than disapproving a local ordinance—one that has received the benefit of public hearings and the leadership and approval of a locally elected Mayor and City Council.

Mr. Speaker, the facts do not support the comparison the gentleman from Illinois (Mr. PHILIP M. CRANE) attempted to make earlier, and even if the facts were accurate, one wrong does not justify another. Regardless, Mr. Speaker, the gentleman's disapproval resolution goes deeper in that it pierces the veil of integrity as far as the issue of local self-government and home rule are concerned.

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It is clear that the government of the District of Columbia acted within its authority in passing the Sexual Assault Reform Act. In doing so, it was acting within the authority which it was granted under the Home Rule Act of 1973. Passage of this resolution of disapproval would be a clear and dangerous violation of home rule.

Although since 1973 there have been 10 resolutions of disapproval considered, in only one instance, when the council attempted to dictate location of the courts, was such a resolution passed and the law overturned. In that instance, there was a clear and compelling Federal interest. I do not believe such a case can be made here.

It should be noted that some 24 States have enacted provisions regarding sexual assault and sexual conduct among consenting adults which are consistent with the law passed by the District of Columbia City Council. Beyond this fact though, this act neither violates the Constitution, exceeds the authority granted under home rule, nor violates a Federal interest.

It is a sad day when the clariion call of a small band of zealots in this body railroad legitimately enacted laws because those laws do not meet "their" standard of morality. The single-minded nature of this resolution will make a mockery of progress toward home rule here in the District of Columbia. Passage of this disapproval will assure the residents of this city that for all the talk about home rule, and the need to encourage self-governance, the Congress remains ready to step in whenever it is so inclined to second guess the actions of this city's lawfully elected government.

Such a mixture of morality and hypocrisy should be odious to the Members of this body. I strongly urge the defeat of this resolution.

Mr. DYMALLY. Mr. Speaker, I think a case against this resolution has been made in a very eloquent manner by the distinguished chairman of the House Committee on the District of Columbia, and the gentleman from Connecticut (Mr. McKINNEY).

If I may, I should just like to ask the gentleman from Illinois (Mr. CRANE) one question which is hypothetical. I have just received word that the Illinois Legislature has abolished the police department in the gentleman's city of Prospect and replaced it with State police. What would be the gentleman's reaction to that?

Mr. PHILIP M. CRANE. Will the gentleman yield?

Mr. DYMALLY. I yield to the gentleman from Illinois (Mr. PHILIP M. CRANE).

Mr. PHILIP M. CRANE. I would be very keenly distressed.

Mr. DYMALLY. I thank the gentleman very much. I think he has just made a case against his resolution, because what we have before us here is not whether that act by the City Council is proper or moral or legal, it is whether they have complied with

Federal law. It seems to me that we are passing moral judgment on legal principles.

The only questions I think we need to ask and answer are the following:

Has the action of the city exceeded the powers granted it under the Home Rule Act?

Has the city on the face of this 4-69 Act clearly violated any constitutional principle?

Third, has the city interfered in a Federal question or obstructed the Federal interests?

If there ever were a case of colonial mentality, in my judgment it is exemplified in this piece of legislation before us today. It seems to me so hypocritical that Members who come from States with a lottery would vote against a lottery, especially those from Maryland and Virginia.

The question then that is before us, and the one that should be of interest especially to Members on the other side of the aisle—over the last 20 years I have heard them talk about local initiative and States' rights, and this seems to me a violation of local initiative.

Mr. PHILIP M. CRANE. Will the gentleman yield?

Mr. DYMALLY. Yes, I yield on the gentleman's time.

Mr. PHILIP M. CRANE. On my own time, then.

I would remind the gentleman that Mount Prospect, Ill., is a totally inappropriate parallel with Washington, D.C. The gentleman's distress may have some basis but, on the other hand, that is an issue to be taken up with the 50 States if he wants to repeal article I, section 8 of our Constitution and its mandate to the Members of this body, which is explicit and abundantly clear, just as the home rule bill is abundantly clear on the responsibilities this body has. It is tax dollars from our area which go to underwrite the costs of this city to a very substantial amount, not the other way around.

Mr. DYMALLY. I do not want to dispute the distinguished gentleman from Illinois, but the fact of the matter is that this city, this District is subsidizing the Federal Government. This District pays in more taxes to the Federal Government than it receives, so that is not an exactly accurate statement.

If we feel so keenly it seems to me one of the things we should do is adequately finance the city in proportion to the amount of money they give the Federal Government.

Mr. PHILIP M. CRANE. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Virginia (Mr. PARRIS).

Mr. PARRIS. Mr. Speaker, I appreciate the gentleman yielding. I would just like to address the question to the previous speaker who has frankly confused me modestly in his comments in his reference to lottery in my own

State of Virginia. Will the gentleman clarify?

Mr. DYMALLY. Will the gentleman yield?

Mr. PARRIS. I yield to the gentleman.

Mr. DYMALLY. I was referring to Maryland.

Mr. PARRIS. The gentleman included the Commonwealth of Virginia, which I have the privilege of serving, and I was confused on that point.

Mr. DYMALLY. I meant Maryland. I am sorry.

Mr. PARRIS. I thank the gentleman for his clarification and yield back the balance of my time.

Mr. DELLUMS. Mr. Speaker, I yield 5 minutes to my distinguished colleague from Michigan (Mr. CONYERS).

(Mr. CONYERS asked and was given permission to revise and extend his remarks.)

Mr. CONYERS. Mr. Speaker, the one thing that is abundantly clear is that the rule that permits, on a majority vote, a committee to be discharged must be changed, and I will initiate that process within the Democratic Caucus immediately. I am ashamed on behalf of the leadership of the Congress that on this critical question involving 900,000 people, on this question involving the integrity of the committee process, I find myself first of all strapped by not being able to summon the Members to the floor for debate. Second, I then hear the gentleman from Illinois pointing to the lack of people on the floor, of which there are presently less than 50, and have been ever since my last quorum call, and asserting that that is because everybody understands the law and have made up their minds. Well, the one thing that this debate has proven, even though it has been aborted again by the person who intervened with this absurd proceeding, is that nobody understands what the law is. We can, at least, have it reduced to the CONGRESSIONAL RECORD so that we can review the law that actually increases the penalty, broadens the protection against those who are the persons who may be victims of sex crimes, and then, when the highest legislative body in the United States of America comes to debate this, with nobody understanding precisely what we are doing in overturning a full committee's action and a council that has worked and had a number of hearings for a great amount of time, what does this say about concern on the national level? I approach my colleagues now as chairman of the Criminal Justice Subcommittee, which happens to be holding hearings on the Federal Criminal Code, of which sex assaults and sex crimes are a part. What is the Federal law, and who in Congress would like to move this position being put forward into the Federal law?

A call to my subcommittee will reveal that there is not one pending

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sex crime bill in the Subcommittee on Criminal Justice.

Mrs. FENWICK. Mr. Speaker, will the gentleman yield?

Mr. CONYERS. I yield to my colleague from New Jersey (Mrs. Fenwick).

Mrs. FENWICK. I thank my colleague for yielding. I have one question I would like to ask. Does this newly proposed bill, the Council's bill, increase or decrease the penalty for public lewdness, lascivious behavior, et cetera?

Mr. CONYERS. I would have to yield to the counsel for the committee for a precise answer on that. I would say to the gentleman that as soon as I get that I will put it in the Record.

This bill clearly extends the protection and the coverage for victims of sex crimes. It extends the penalty for public sex crimes. It makes it clear in a way, especially in terms of forcible rape, that we now have classes of the crime of rape that were not covered by the previous simplistic version, which was the very simple and the most gross act. Now it includes those who may be seduced or who are not competent to know what they are doing, who have not finally given their consent, and other fiduciary capacities in which persons might be taken advantage of by both sexes.

Mrs. FENWICK. I thank my colleague.

Mr. CONYERS. Finally, I would point out to my colleagues that the Federal Criminal Code legislation passed in the full Committee of the Judiciary, and by the other body in the previous term, fully contemplates the thrust of this law which we are so busy turning over and taking apart.

□ 1545

So I suggest to the Members that what we are doing here today in this process is an incredible disservice to the committee procedure, that we are acting in an area in which our unfamiliarity has not been publicly spread upon the record, to the embarrassment of most of the Members here. We do not know what is in the bill. It has been distorted. Thanks are due to a valiant few. I salute the gentleman from California, the chairman of the committee, the Delegate from Washington, the gentleman from Louisiana, and a handful of others who have spent time trying to bring truth and light to this measure.

The SPEAKER pro tempore. The gentleman from Illinois (Mr. PHILIP M. CRANE) has 15 minutes remaining and the gentleman from California (Mr. DELLUMS) has 2 minutes remaining.

Mr. PHILIP M. CRANE. Mr. Speaker, I yield 3 minutes to my colleague, the gentleman from Virginia (Mr. PARRIS).

Mr. PARRIS. I thank the gentleman for yielding.

Mr. Speaker, I wanted to simply make a technical point that was addressed by the gentleman from Michigan just a few moments ago in his expression of his intent to approach the problems of the procedures set out in the home rule bill as it relates to the discharge petition by one Member.

I submit to the gentleman that I would hope that he would not pursue that.

In 1873, when the home rule was adopted, we debated that particular point at some great length. And the suggestion was made that if any single Member of this body feels constrained to do so, a discharge petition can be brought. That is why we are here today.

The point I make to the gentleman is that it is not likely, in most instances, that, without great support on that motion, there would be a majority of the Members of this body who would support that petition.

So what I submit, for the sake of argument, at least, that in most instances if you can get 218 or more Members to vote for a petition to discharge, you can sure get 10 or 20 or 50, or whatever is the appropriate number, to go on the petition.

Mr. CONYERS. Mr. Speaker, will the gentleman yield?

Mr. PARRIS. I yield to the gentleman from Michigan.

Mr. CONYERS. Mr. Speaker, I am glad that the gentleman is concerned with this point. But that is precisely what I was struggling to make clear.

You do not need 218 Members to discharge. Unlike every other discharge requirement under the rules of the House of Representatives, you need a simple majority vote. And that, precisely, is what I propose to remedy.

Mr. Speaker, one last thing. I have just been handed the following note by a citizen of the District of Columbia, and I feel that this is a sincere expression of the concern for what is happening to the democratic process, particularly in the context of our floor debate on the resolution of disapproval.

The text of the note follows:

OCTOBER 1, 1981.

HON. RONALD DELLUMS,
2136 Rayburn House Office Building,
Washington, D.C.

DEAR MR. DELLUMS: Having just witnessed your impassioned defense of the right of the people of the District of Columbia to determine their own way of life, I would like to express my profound admiration and respect for your efforts on this issue.

Freedom and democracy have sustained two setbacks today, as the members of the greatest democratic body in the world have acted to remove from a group of citizens the right to self-determination, and the right to act as one wishes in the sanctuary of his own home.

Your attempt to enlighten the piously "moral" members of the House on this cause was eloquent, thoughtful, and most importantly, right. I share your belief that twenty months, twenty years, twenty decades from now, the history books will reflect the extreme danger that was posed by this

action of the House, and will show that on future occasions, our representatives were able to exercise the good judgment that is imbedded in their trust.

Mr. PARRIS. I thank the gentleman for his contribution, and I yield back the balance of my time.

Mr. FRENZELL. Mr. Speaker, I oppose this motion to discharge the resolution of Disapproval of D.C. Act 4-69 from the District of Columbia Committee, and therefore will vote for the motion to lay it on the table.

The District of Columbia Sexual Assault Act, passed unanimously by the D.C. City Council on July 14, 1981, make certain changes in the D.C. criminal law of which many people, including myself, disapprove.

It is not the specific provisions of the act, however, that make a difference here. What is at issue today is the appropriate exercise of Congress authority over legislation passed by the District. The disapproval resolution asks us to revoke home rule. Under the Home Rule Act Congress has authority to "amend or repeal . . . any act passed by the Council." The District of Columbia Committee has, however, exercised its oversight functions carefully, using reasonable criteria to determine in which cases congressional interference is justified.

When considering such cases, the committee says it considers whether the District's legislation first, violates the Constitution; second, exceeds the authority granted in the Home Rule Act; or third, obstructs a clear Federal interest. Obviously, the council's action is not unconstitutional, nor does it exceed the limits stipulated in the Home Rule Act. I do not believe that it interferes in a Federal question, or obstructs the Federal interest.

It does however unreasonably interfere with the local decisionmaking authority of the District of Columbia.

Forty States now have laws nearly similar to D.C. Act 4-69. Although proponents of the resolution of disapproval claim we must maintain a stricter standard for the District because it is the Nation's showplace. But I am more concerned about another example we are in danger of setting today.

I have traditionally favored decreased Federal interference in local affairs. I will continue to do so. Therefore, I will not vote to change a local decision.

Surely none of us would tolerate congressional interference in such matters in our home States and cities. I do not like Congress telling my town of Golden Valley how to write its ordinances. I believe that the citizens of Washington deserve like consideration.

I think anyone truly committed to the principle of local decisionmaking should admit that Congress has no business overturning a matter, however repugnant that has already been properly dealt with by the D.C. Coun-

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cil, and does not violate the Constitution. I urge a vote for the motion to table it against the resolution to disapprove.

● **Mr. OBERSTAR.** Mr. Speaker, the issue before the House today is whether Congress should act to interfere with the operation of the government of the District of Columbia and with implementation of legislation duly enacted by the elected government of the District.

We do not face an easy question. The relationship between Congress and the District is not the same as that between Congress and the States. The Constitution explicitly grants Congress broad legislative jurisdiction over the seat of the Federal Government of the United States. Congress, however, has acted to use that constitutional authority to provide for the principle of home rule which governs the District of Columbia today. Under the provisions of law enacted by Congress, the District elects a city council and a mayor which function as the legislature and Governor do in the States.

Congress retains the right under Public Law 93-198, the Home Rule Act, to review all legislation passed by the District government.

The ranking member of the House Committee on the District of Columbia, our distinguished Republican colleague, the gentleman from Connecticut (Mr. McKINNEY), has stated quite well during this debate that Congress should consider legislation enacted by the District government in light of three major questions:

First, does the action of the city violate the Constitution?

Second, does the action exceed authority granted by the Home Rule Act and other legislation enacted by Congress?

Third, does the action violate a clear Federal interest?

The Federal interest involved is the efficient operation of the Federal Government. The question we face is: Does the legislation which is the subject of the resolution before us today interfere with the operation of the Federal Government in Washington? My duty to my constituents in Minnesota requires that I evaluate the legislation, not as if I were a member of the D.C. City Council, but in terms of the Federal interest in the operation of the National Government.

Tested by those three standards, the resolution before us falls short. The D.C. Council action does not violate the Constitution. It does not exceed the authority of the Home Rule Act, and it does not violate the Federal interest in the effective operation of the National Government.

Consequently, I must concur with the Committee on the District of Columbia that the resolution before us today is inappropriate and I must vote against the resolution of disapproval, House Resolution 208.

● **Mr. FOGLIETTA.** Mr. Speaker, in his leadership of the floor debate for support of the District of Columbia's Sexual Assault Reform Act (D.C. Act 4-69), the gentleman from California, the Honorable Mr. DELLUMS speaks with eloquently and correctly about the issue before this body. I commend him for his efforts, his grasp of the many elements of the question we address, and his respect for the rights of the people, not only from the District of Columbia, but from across the land. Also, I commend the gentleman from Connecticut, the Honorable Mr. McKINNEY, for his efforts and dedication as ranking minority member of the Committee on the District of Columbia, both on the House floor today, and in committee since the beginning of his tenure in Congress. At the conclusion of this debate, I hope that many more Members of this body will join across the aisle to reject House Resolution 208, which is a resolution whose provisions and implications are both very serious and very dangerous.

Mr. DELLUMS and Mr. McKINNEY have, I believe, placed the issue in the proper perspective. They have cited the questions that came before the Committee on the District of Columbia that would make the rejection of D.C. Act 4-69 justifiable. They asked if the Sexual Reform Act violates the Constitution. Obviously, if the provisions of the act are placed in the laws of 25 other States around the country, they do not. They asked if the act exceeds the authority granted by the Home Rule Act of 1973. It does not. They asked if it is in clear violation of the Federal interest. It is not. And yet, at this time, there is the very real possibility that, at the end of this day, D.C. Act 4-69 will be on its way across town to the D.C. City Council Chambers again, rejected by his body.

The issues that confront us in this debate are many. Clearly, there are those who see it as a moral issue. To a degree, they are right. There are those who view it as a legal issue. It is that, too. But from the standpoint of the Federal authority the legal questions have been satisfied. The grounds by which we may send this bill back to the city are covered. The city is in no violation of those requirements. Surely we must see that.

If we take up the matter on moral grounds then we must ask, is this body the place for such a debate on an issue of this kind? I think not. This question, because it in no way violates Federal law, belongs in the province and the domain of the State, and, in this case, of the District of Columbia. It is not for us to legislate their morality, or their criminal code as it relates to it so long as it does not violate Federal law. Rather than assault the moral element of the question, we should respect the right of the District of Columbia's citizens to make their own judgments. This law is not ground breaking or unique. Indeed, it is merely an attempt by the District of

Columbia to move into line with half our States, which have already recognized the privacy of relations between consenting adults. May I point out to the gentleman from Illinois who leads the debate for discharge that it was his own State which first recognized this right, and, in 1961 brought it into law.

Mr. Speaker, Members of the House, I urge you to consider the argument put forth by the gentleman from California, Mr. DELLUMS. Consider that this bill in no way infringes on the authority of the Congress, that it is not the right of the Congress to legislate over this matter. Merely, because the people of the District of Columbia are not your constituents, do not abuse their right to self determination, to make up their own minds as citizens of America, because it is convenient for you. To do so is an infringement upon the rights of the District of Columbia, upon the rights of her citizens, and upon the rights granted simply through living in a democracy such as ours.

Mr. PHILIP M. CRANE. Mr. Speaker, I reserve the balance of my time.

Mr. DELLUMS. Mr. Speaker, may I inquire of the gentleman from Illinois whether he chooses to close out the debate?

The gentleman from California only has 2 minutes remaining. So I would like to get some idea as to how the gentleman chooses to proceed.

Mr. PHILIP M. CRANE. Yes, I would indeed like to close out the debate from this side. The distinguished chairman of the committee is short of time, I realize, and requested that I yield him 2 additional minutes. I am more than happy to do that, and then I will finish our presentation.

Mr. DELLUMS. Mr. Speaker, might I engage the gentleman for a brief colloquy on that matter?

Mr. PHILIP M. CRANE. Certainly. Mr. DELLUMS. The gentleman on this side has 2 additional minutes.

The SPEAKER pro tempore. The gentleman from Illinois (Mr. PHILIP M. CRANE) has 11 minutes remaining. The gentleman from California (Mr. DELLUMS) has 2 minutes remaining.

The gentleman from Illinois has the right to close debate. I understand the gentleman has stated that he would yield 2 of his minutes to the gentleman from California, which would mean 4 minutes for the gentleman from California and 9 minutes for the gentleman from Illinois.

Mr. DELLUMS. The gentleman from California would like to ask the distinguished gentleman from Illinois, in the spirit of his original offer, maybe we could split the difference, the gentleman from California taking 6 minutes and the gentleman from Illinois taking 7 minutes, and we will close out the debate.

Mr. PHILIP M. CRANE. All right. Why not?

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The SPEAKER pro tempore. The gentleman from California (Mr. Dutton) is recognized for 6 minutes.

Mr. DUTTON. Mr. Speaker, I first would like to thank my distinguished colleague, the gentleman from Illinois, for yielding time for us to close out this debate. The debate has been devoid of rancor and anger, and the gentleman from California appreciates that very much. But I would like to add that I believe this is perhaps one of the most tragic moments that I have found myself in as a Member of the House of Representatives, and that is with all due respect to the Members who support the resolution of disapproval, House Resolution 208.

I think that what we are doing here is significantly challenging the notion of democratic processes. I think that we are significantly challenging the whole notion of home rule. As a matter of fact, I would assert that at this very moment, home rule is a sham and a fraud as it is perceived by the majority of my colleagues in the House of Representatives. Home rule is not a reality. The residents of the District of Columbia continue to be in a colony, the District of Columbia. We only give illusion to freedom and democracy, only when it is convenient. But when we choose to proselytize, we challenge the District. When we choose to address a controversial issue that cannot as easily be addressed at the Federal level, we challenge the District of Columbia. When we wanted to make a significant point without any significant risk to ourselves politically, then we thought home rule, because residents of the District of Columbia do not send us to office. In fact, they send a gentleman who does not even have a vote on the floor of Congress. He can only speak.

So I think that home rule is a sham. I think that what we have done all day here underscores the notion that home rule is no longer a reality, that we give lip service to this. So let all of the Fascist nations in the world understand that we do not really believe in democracy unless it is convenient. Let all of the nations that we challenge, who are undemocratic in the processes, bear loud and clear that the U.S. Congress also does not care about freedom and justice and dignity within the framework of a representative form of government embodying democratic principles, because it is not convenient. Let everyone understand that we are guided more by political considerations than we are the caring of human freedoms. Let people understand that we write laws where the labels appear to do justice to people, but in reality the implementation of those laws leave a great deal to be desired.

This gentleman is in the progressive wing of the body politic, referred to by some as the Don Quixote of Capitol Hill, perhaps. But this gentleman will continue to tilt at windmills if those windmills speak to the very essence of

our human lives, and that is the right of people to express themselves within the framework of the democratic processes.

So 8 years ago we said, "you people can have home rule," but today we are saying, "But we have you somewhere between freedom and servitude, and today we choose to place you in servitude."

There is no dignity in that position. There is no integrity in that position. I would submit, with all due respect, there is no honesty in that position. The fact that we are devoid of an audience here speaks to the reality that my distinguished colleagues, the gentleman from Maryland, was perfectly current when he said that "my colleagues are being stampeded into a position," because there is no thought process here.

Even if we disagree with the residents of the District of Columbia, we should defend their right to take a stand, because that is all this country is about. If we are not about that, we are just some other group of 200 million human beings flailing away at each other on a daily basis. But what brings us dignity and what brings us a beacon of hope is that we are, ostensibly, a people committed to democratic procedure, democratic processes, individual rights, and individual freedoms. But this whole day, in my estimation, is a significant challenge to that. My colleagues would leave the Chamber and suggest that they fought diligently for these principles, when I suggest that we have done just the opposite.

Mr. Speaker, we are not here raising the question of whether the House has authority. We wrote this Home Rule Act in a very conservative environment, and many of my colleagues wrote this authority into the act in order to get it through the Congress. That is a reality. That is a fact. We do not challenge it. Do we have a responsibility under the act as it is written? Obviously, we do. The question is, What shall be the criteria that will guide the judgments we make as we impact upon other people's lives?

And again I underscore that we developed that criteria, but it has now been thrown out because we are not dancing on the whims of political expediency. But I would repeat: We are dancing on our own principles, we are dancing on our own credibility, we are dancing on our own integrity. Some day we will like to repeat this moment.

I realize that I am standing here in a losing cause, and many of us have stood in a losing cause. We continue to stand only because we hope that 29 weeks, 20 months, 20 years—20 decades from now, somebody will write that some people stood up here and fought for the only thing that we have that makes us a civilized people, and that is our commitment to democratic freedoms. We have not abandoned it.

So I stand here in frustration and in defeat. But I think that ultimately it

is the majority side of this issue that ultimately will be defeated, because people will not for a long time tolerate a violation of their democratic principles.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The Chair recognizes the gentleman from Illinois (Mr. PHILIP M. CRANE).

Mr. PHILIP M. CRANE. Mr. Speaker, I want to congratulate the distinguished chairman of the Committee on the District of Columbia for his very able presentation of his side of this debate and the gentlemanly way in which he has conducted himself throughout the afternoon.

I would simply remind my colleagues that there are many D.C. residents, as well as constituents outside of this jurisdiction, who feel that they were not properly represented at the time of the D.C. Council hearings. For example, Rev. Cleveland Sparrow, president of Sparrowworld Baptist, Corp. here in Washington, D.C., stated:

Congress must learn that the D.C. City Council did not hold hearings to obtain our views on this matter.

Rev. Cary Pointer, president of the Baptist Ministers' Conference of D.C., urged that the Congress should act to veto this legislation because it did not represent the constituencies that he represents.

There are other civic and community organizations in D.C. and, as I indicated earlier today, I have 10,000 petitions from residents of Washington, D.C., urging Congress to do the responsible thing in overturning what they feel was an inappropriate act by the D.C. Council. When I say "an inappropriate act," I am not talking about the entire bill. The entire bill, in fact, has much merit. I would say easily 90 to 95 percent of it is a plus, very positive. But I think it has such flagrant deficiencies that it is essential that the Members of this body vote to send it back to the drawing boards, back to the D.C. Council for more extensive hearings, more input, more representative input from some of the affected parties who have strong objections. I think, therefore, the responsible position on the part of this body is to vote aye on House Resolution 208 disapproving the action of the District of Columbia Council and approving the District of Columbia Sexual Assault Act of 1981.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. All time has expired.

The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the yeas appeared to have it.

Mr. PHILIP M. CRANE. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

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The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 281, nays 119, answered "present" 1, not voting 32, as follows:

Taylor	Weber (OH)	Wortley
Thomas	White	Wright
Traxler	Whitehu..	Wylie
Vander Jagt	Whitley	Yatron
Volkmcr	Whittaker	Young (AK)
Walker	Whitten	Young (FL)
Wampler	Wilson	Zablorki
Watkins	Winn	Zeferttl
Weber (MN)	Wolf	

Mr. JAMES K. COYNE changed his vote from "nay" to "yea."
So the resolution was agreed to.
The result of the vote was announced as above recorded.

NAYS- 119

[Roll No. 232]

YEAS—281

[illegible]

Alkata	Praythe	Nowak
Alicun	Powlee	Obratnik
Almar	Praythe	Okinger
Beckel	Prnsnel	Peyzart
Be-Jenson	Orndorson	Przyrhard
Billingham	Olman	Pumell
Billingham	Stanley	Reagan
Bolling	Oradson	Remus
Bonior	Oray	Richmond
Brown (CA)	Orsini	Rice
Brown, Burton	Guarni	Roe
Brown, Philip	Horton	Rosenbhal
Culline (IL)	Hick	Roybal
Conzbe	Howard	Sabo
Cook	Hosmer	Schaefer
Conyers	Jacobs	Schmeidler
Coyne, William	Jelladu	Schroeder
Cruckert	Kleinreuter	Schumer
Cullin	Klein	Schur
Daachle	Lehman	Shannon
DeKard	Levinson	Snowe
DeKard (CA)	Levin	Snyder
DeMarila	Lucky (WA)	Stark
Derick	Loren	Stokes
Dorn	Lundgren	Stodde
Dorn	Murphy	Szwyt
Dorner	Lundgren	Szwyt
Dr malty	Masul	Vreoto
Edgar	Mattox	Walgren
Edwards (AL)	McHugh	Wasman
Edwards (CA)	McKinney	Wasson
Erdahl	Millich	Wren
Farrell	Mitch (CA)	Williams (M)
Farr	Mitch	Wolfe
Fenwick	Minish	Wolfe
Pi n	Mitchell (MD)	Yates
Flora	Molnar	Yates
Ford (TN)	Mollinari	

ANSWERED "PRESENT"-1

Obey

NOT VOTING--32

Addabbo	Goldwater	Pashayan
Ashbrook	Hanzen (UT)	Pepper
Beard	Harkin	Quillen
Blankhard	Holland	Savage
Chisholm	Jones (NC)	Rhodes
Conrad	Leand	Simon
Dingell	Mazoli	Tribi
Dorman	McCluskey	Washington
Fiorio	McGrath	Williams (OH)
Garcia	Moore	Young (MO)
Gibbons	Murphy	

□ 1610

The Clerk announced the following pairs:

On this vote:

Mr. Young of Missouri for, with Mr.
Washington against.
Mr. Simon for, with Mrs. Chisholm
against.

Until further notice:

Mr. Garcia with Mr. Shumway.
Mr. Ireland with Mr. Tribble.
Mr. Florio with Mr. Pashayan.
Mr. Addabbo with Mr. Quillen.
Mr. Pepper with Mr. McCloskey.
Mr. Dingell with Mr. McGlothlin.
Mr. Jones of North Carolina with Mr.
Hansen of Utah.

Mr. Murphy with Mr. Williams of Ohio.
Mr. Mazzoli with Mr. Beard.
Mr. Blanchard with Mr. Dorman of California.

Mr. Holland with Mr. Corcoran.

Mr. Harkins with Mr. Moore.

CORRESPONDENCE RECEIVED FOR THE RECORD

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*Federation of Citizens Associations
of the District of Columbia*

ORGANIZED MARCH 8, 1910 • INCORPORATED JUNE 9, 1940

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September 22, 1981

Hon. Ronald V. Dellums
Chairman, D.C. Committee
U.S. House of Representatives
Longworth H.O.B., Suite 1310
Washington, D. C. 20515

Attn: Don Davis, Staff Assistant

Re: Testimony on Denial of the Constitutionally-required
due process hearings with regard to D.C. Act 4-69
and on H. Res. 208 by Reps. Crane, McDonald, and Harriott

Dear Chairman Dellums:

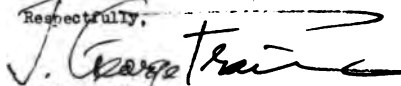
It has been reported to us by the U.S. Senate that D.C. Act 4-69 would repeal the only beastiality provision in the D.C. Criminal Code, according to the Library of Congress.

Mr. Don Davis, and Mr. Johnny Barnes of your staff have told me that we could submit testimony on H. Res. 208 in connection with Hearings scheduled for Sept. 24, 1981. We ask that our testimony and exhibits be included in the Hearing Record and published along with other testimony presented by D.C. Government Officials.

Our testimony and exhibits will help explain the strong citizen objections to D.C. Act 4-69 on the part of Catholic and Protestant clergy, civic and citizen groups, and parents and heads of families.

This much is clear, D.C. Act 4-69 is not a home rule issue, it is a Home Ruin issue. We urge you to disapprove D.C. Act 4-69, and suggest that the City Government include it as a city-wide referendum issue so the citizens can vote it up or down. As you know, Statehood, and Gambling, and now tuition credits for education, have been, and will be, put before the voters for a city-wide referendum. Why shouldn't such as important an issue as posed by D.C. Act 4-69 be placed before the voters?

Respectfully,



J. George Frain
First Vice President
Federation of Citizens Associations, D.C.

1789 Lanier Place, N.W.
Washington, D. C. 20009
Phone: 387-3737

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September 23, 1981

Testimony of J. George Frain, First Vice President Statement on S. Res. 207, and H. Res. 208, at Congressional Hearings, Sept. 24 & 30, 1981

We want to go on record as strongly supporting S. Res. 207, and H. Res. 208 which, if adopted by the U.S. Senate and U.S. House of Representatives, would disapprove of the District of Columbia Act 4-69. We were denied due process, a Constitutional requirement, by the City Council which provided no report or analysis of it. We have been advised by staff people connected with the House District of Columbia Committee the Congress would focus on the narrow question of whether or not the D.C. Government had the authority to adopt such outrageous legislation as D. C. Act 4-69 which would legalize fornication, adultery, sodomy, and seduction.

The D.C. City Government clearly was not given authority by the Congress in the Home Rule Act to make another Sodom out of the Nation's Capital.

Congress did not delegate to the D.C. Government in the Home Rule Act the authority to destroy homes and family life by legalizing sodomy, fornication, adultery and seduction of teen-age boys and girls, and approving these life-styles for America.

A year ago, the Washingtonian Magazine (Sept., 1980) asked "Is DC Becoming the Gay Capital of America" and showed the inroads which Gays had achieved in controlling the political decisions of the Mayor and City Council. I submit a copy of this article which names names, and gives an in-depth look at the real situation in D.C.

The Washington Post, August 27, 1981 reported that Mayor Barry had appointed a homosexual activist to the Alcoholic Beverage Control Board; there are, said the Post, 32 (gay-oriented) restaurants in DC, and the appointment was celebrated in private in Mayor Barry's office from which the public and the news media were excluded.

The Catholic Archbishop of Washington, James A. Hickey, wrote in the Catholic Standard (July 16, 1981) that: "The new legislation, however, removes civil prohibitions with regard to adultery, fornication and sodomy. By so doing the law withdraws significant support for fundamental values of our Jewish and Christian moral tradition. The fabric of society is weakened when basic values of family life and human sexuality are no longer protected by law. Adultery, fornication, and sodomy are immoral. The withdrawal of civil prohibitions and penalties does not make them morally permissible. They are wrong because of the very nature of human love, sexuality and the family."

The D.C. Chapter of the Knights of Columbus recently adopted a resolution strongly endorsing and backing the views of Archbishop James A. Hickey. Martin Ryan is head of the D. C. Chapter of the Knights of Columbus.

The City Council, the city's legislative body, denied D.C. citizens due process, a Constitutional requirement, by not providing a section-by-section analysis and an explanation of the bill's intent (D.C. Bill 4-122, later to become D.C. Act 4-69) at or prior to the hearings by its Judiciary Committee on March 12 and 13, 1981.

2.

The Washington Star (July 15, 1981) reported that Rev. Carey Pointer, president of the Baptist Ministers Conference of the District of Columbia--consisting of some 500 Baptist ministers--had denounced the legislation to legalize sodomy, fornication, and adultery

On August 17, 1981 the Federation of Citizens Associations of the District of Columbia petitioned the Congress to disapprove D.C. Act 4-69 and strongly denounced the legalizing of sodomy, fornication, adultery, and seduction.

On September 12, 1981 the D. C. Federation of Civic Associations Inc., consisting of 56 local civic and citizens associations in the District of Columbia petitioned the Congress to disapprove D. C. Act 4-69 and said "We regard the steam-roller legislative procedure employed as a travesty of the local legislative process intended by our Home Rule Act." See "History of D.C. Act 4-69" below.

On August 13, 1981 the Federation of Citizens Associations of the District of Columbia wrote to the Reverend Jerry Falwell requesting help from the Moral Majority which up to that time, had not taken a position on the nation-wide "home-and-family-ruination aspects of D.C. Act 4-69". On August 19 six days later, the Moral Majority and Rev. Falwell wrote "We are moving to mobilize Moral Majority and are working hard to find sponsors in both the House and Senate to stop this D.C. Act. On August 24 the Moral Majority Report carried a major article titled: "D.C. Sex Laws Outrageous Congress Urged to Veto Liberal Package". This article pointed out that if passed into law by Congress, D.C. Act 4-69 would, among other things,

1. Repeal the statute under which Rep. Hinson was arrested and charged with sodomy in a House office building.
2. Effectively remove all sanctions against homosexual conduct in the District of Columbia.
3. Repeal statutes prohibiting adultery and fornication.
4. Repeal the D.C. law prohibiting sexual seduction of a child by a teacher.
5. Legalize a sexual advance by a teacher against a 17-year-old child, so long as no force was used.

HISTORY OF D.C. ACT 4-69 - There was no report, or section-by-section analysis, on intent of D.C. Act 4-69, or of the legislation Bill 4-122) when the Judiciary Committee of the City Council held hearings in March 1981, so citizens did not know it proposed to legalize sodomy, fornication, adultery, and seduction. Corporation Counsel Judith Rogers, Police Chief Burtell Jefferson, Mayor Barry, and U.S. Attorney for D.C., Charles Ruff, deliberately failed to point out that sodomy etc. would be legalized by D.C. Act 4-69 and Bill 4-122 at the March 1981 hearings. The real intent of D.C. Act 4-69 and Bill 4-122 was known only to the homosexual community, David A. Clarke, and these officials (Rogers, Jefferson, Barry & Ruff) but was carefully withheld from the community. They failed to protect the entire community, its homes and families and were concerned only with advancing homosexuality and sodomy.

We strongly urge two steps: 1. Congressional Adoption of S. Res. 207 and House Res. 208; 2) that Mayor Barry and the D.C. City Council move with the help of the opponents of D.C. Act 4-69 to put this proposal on a referendum city-wide at the earliest date possible.

Respectfully submitted,

 J. George Frain, First Vice President

CATHOLIC STANDARD
 Washington, D.C.
 July 16, 1981

Address: 1711 N Street, N.W., Washington, D.C. 20036
 Telephone: (202) 785-2700

Letter from Archbishop

My brothers and sisters in Christ,

The Council of the District of Columbia this week enacted legislation intended by its authors to modernize and consolidate the laws of the District regarding sexual assault. The bill broadens the traditional definition of rape to include forms of compulsion other than physical force.

Efforts to combat rape more effectively are commendable. I am pleased, also, that the provisions protecting children and minors from sexual abuse remain in the law.

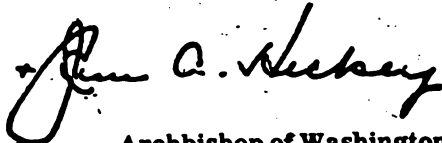
The new legislation, however, removes civil prohibitions with regard to adultery, fornication and sodomy. By so doing the law withdraws significant support for fundamental values of our Jewish and Christian moral tradition. The fabric of society is weakened when basic values of family life and human sexuality are no longer protected by law.

Adultery, fornication and sodomy are immoral. The withdrawal of civil prohibitions and penalties does not make them morally permissible. They are wrong because of the very nature of human love, sexuality and the family. Our present situation, therefore, makes it even more necessary that the family and the Church community offer guidance and encouragement in the areas of moral judgment and value formation based on the enduring law of God taught to us by the Lord Jesus.

Each of us should take this occasion to renew our own dedication to the teaching and example of Christ and to pray that our society will uphold those fundamental human values received from God Himself. They are for the welfare of our families and of people everywhere.

Asking your prayers for all families and for all who seek to live in Christ Jesus, I am,

Sincerely in Christ,



Archbishop of Washington

LETTERS TO THE EDITOR

Archbishop's letter prompts groups to petition Congress against D.C. sex law

You might wish to support our effort as set forth in the attached letter to Congress. We were powerfully influenced by the "Letter from the Archbishop," (Standard 7/18). You might want to publish our letter in your letters column — we would like that. We fully support the position taken by Archbishop James A. Rickey.

J. George Frain
First Vice President
Federation of Citizens
Associations of
District of Columbia

The letter addressed to The Honorable George Bush, President of the Senate, and The Honorable Thomas P. O'Neill, Jr., Speaker of the House of Representatives, follows:

Subject: Petition That Congress Disapprove D.C. Act 4-68; "District of Columbia Sexual Assault Reform Act of 1981."

The Federation of Citizens Associations of the District of Columbia hereby petitions the Congress to disapprove D.C. Act 4-68, popularly already known as "The D.C. Sodomy Licensing Act," which was submitted to the Congress on July 21, 1981, under Section 602 (c) of the District of Columbia Self-Government and Governmental Reorganization Act P.L. 93-198.

This act legalizes every sexual act, whether a sodomy, a sadism, or any other perversion purportedly committed with the "consent" of any party 16 years or more of age.

Although, apparently, applying only to so-called "non-commercial" sexual acts, the extreme so-called "proposition" on which it is based, "that a secular penal code should not be used to enforce purely moral or religious standards," can lead even to legalization of prostitution, both male and female, in the Nation's Capital. For what is more clearly proof, or evidence, in a radically "secular penal code" that "consent" has been given than the exchange of some good or value between parties not otherwise obligated in any formal or material relationship to each other? If a shirt may be given to someone for nothing, it may be sold. If it may be sold, it can be bargained, advertised and solicited. The philosophic secular "proposition" for male and female prostitution is radically present in the legal premises of this Act 4-68.

Both the explicit provisions and the implicit ramifications of this act are abhorrent to the members of our Federation, who believe that a social and moral environment is being established in this city which alienates them from other communities in the United States and from the values and protections which the Articles of the United States Constitution were intended to provide them.

The Constitution of the United States states explicitly in Article I Section 8, paragraph 17, that the Congress shall have power "to exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the Government of the United States..."

Thus, under the provisions of the so-called Home Rule Act, the D.C. Act 4-68... will become an Act of Congress itself, unless Congress disapproves it within 30 legislative days.

Our Federation cannot conceive that this Congress will permit such a deviant standard to apply to this nation's capital city, not only depriving its residents of the same quality of life as citizens of the 50 states enjoy but also placing the Congress on record as willing to permit social decadence and moral turpitude to have support of federal law in the nation's capital.

The provisions of this legislation affect the reputation and good name of the entire nation. This city is by Constitutional mandate the capital of our country. Within are located not only the principal executive, legislative and judicial institutions of our nation but also the diplomatic representations of all foreign countries. Major religious, charitable, labor, cultural and professional associations are established here.

In light of these conditions, we feel a double obligation in petitioning Congress in this matter. First, we appeal as citizens and residents of this city who will be denied a quality of social and moral life equal to that which citizens of other jurisdictions enjoy. But, equally, we feel an obligation to write to you on behalf of all the citizens of the United States, asking you as their representatives to protect the good name and reputation of our nation's capital for all Americans.

We have previously written on other Acts of the D. C. Council, with we considered harmful, to the Congress to no avail. The responsible chairmen of the committees of jurisdiction did not even acknowledge receipt of our communications. For this reason, because of the past indifference of the immediately responsible committees to our petitions for appropriate

Congressional hearings and review, we are writing to you directly, as President of the Senate, and Speaker of the House, requesting that you kindly communicate this correspondence to all members, respectively of the Senate and the House.

With every good wish to you personally and with our prayers for blessings on the deliberations and actions of Congress, we sign on behalf of the Federation of Citizens Associations of the District of Columbia, a federation of citizens and civic associations organized March 15, 1910, and incorporated June 3, 1940.

Stephen A. Koczak
President
J. George Frain
First Vice President

3118 Patterson Street, NW
Washington, DC 20015
September 20, 1981

The Honorable Ron Dellums
Chair, District of Columbia Committee
House Office Building
Washington, D.C. 20515

Dear Mr. Dellums:

I am submitting the following statement for the record of your committee's hearings this week on the resolution to disapprove D.C. Act 4-69, the Sexual Assault Reform Act of 1981.

I am writing as a native Washingtonian and as a member of the Chevy Chase (D.C.) Citizens Association, to express my outrage over the participation of the Federation of Citizens Associations in the Moral Majority's drive to destroy home rule for the District of Columbia.

Representatives should understand that the leaders of the Federation decided upon this despicable course by their own initiative and with absolutely no consultation of the individual members of the groups within the Federation. Therefore, President Stephen Koczak, First Vice President George Frain, and their cohorts speak for no one but themselves. Their claim that "both the explicit provisions and the implicit ramifications of this act are abhorrent to the members of our Federation" is therefore utterly fraudulent.

No less deplorable is their pretense that they have been inspired by the position of Archbishop Hickey against the bill. While I believe the Archbishop's statement last June in the Catholic Standard was misguided in several respects, the Archbishop very commendably refrained from suggesting that Congress ignore the home rule principle by overturning the bill.

Koczak and Frain's plea that decriminalization of consensual sodomy in the District would "deprive its resident of the same quality of life as citizens of the 50 states enjoy" reflects their refusal to study the issues objectively before taking a stand. Fully half the states of the Union are currently free of such obnoxious laws. Moreover, Koczak and Frain are apparently unaware that the D.C. sodomy prohibition extends to all persons in the District, whether heterosexual or homosexual, and even applies to married couples. I, for one, am appalled by the notion that the government can not regulate business boardrooms but can regulate private bedrooms.

The Federation of Citizens Associations is composed of individuals of all political and religious persuasions who can put aside their differences to cooperate across a wide range of nonpolitical, nonreligious concerns for the good of the community. By surrendering the Federation to the Moral Majority, Koczak and Frain have betrayed the trust we members placed in them. I hope Congress will not be misled by their cynical exploitation of our good intentions.

Sincerely,
Craig Howell
Craig Howell

In re D.C. Act 4-60
S.Res.207
H.Res.206

"SEXUAL REFORM OR SOCIOECONOMIC MORAL REGRESSION?"

Statement supporting resolutions of disapproval of D.C. Sexual Assault Reform Act to the Senate and House committees on District of Columbia matters (for the record)

by
Willel W.G. Reitzer, private citizen, Washington, D.C.

The D.C. government has voted in a "sex reform act". However, there are D.C. voters who are in favor of the U.S. Senate and U.S. House of Representatives reviewing this act--especially since the U.S. Congress is constitutionally entrusted with the responsibility, and also because this act, we believe, will impact adversely on the capital and nation.

1. First of all, it is questionable whether this law reflects home rule.
 - a. maintained this measure had extensive hearings. This is to some extent true myself test ed them) But the fact is numerous community leaders were unaware either of the hearings or of the far-reaching changes proposed. This was due to lack of publicity which some of us suspect was deliberate because the act had certain unpopular key features that lobbied for mostly by special interest groups. So these features downplayed and other aspects stressed instead. But when several of these unpopular key features came to full public attention, a public outcry resulted and the D.C. government backtracked:
 - i) the provision eliminating incest as crime was restored;
 - ii) the provision lowering the age of consent for sex was removed.
 However the furor over these items obscured the fact that the act still had other unpopular features such as eliminating the offenses sodomy, adultery, and fornication from the D. Code, as well as effectively removing the offense of SOLICITATION (noncommercial) to engage in these acts.
 - b. Another reason this act may not reflect home rule is: several years ago the D.C. government made impossible for D.C. voters to pass on the question of civil right with regard to sexual orientation by denying them the process of voter initiative or referendum such other cities permit. This was a victory for homosexual groups who had lobbied vigorously for it, and would not have been necessary if there were no question regarding D.C. voter preferences in general. Even the Washington Post had editorialized against such legal stratagem (5-29-78). What with the mayor, the city council and Delegate Walter Fauntroy (who supported the national gay rights march--Post, 7-19-79) all having pro-gay record, one may reasonably wonder if the general will of the people D.C. was not disregarded by passing this act. Further support comes from recent Mutual Life Insurance Co. survey showing 71% of the average Americans consider homosexuality immoral.
2. Even more important, the impact of this sex reform act is so harmful (to be documented subsequently) that from a number of considerations the home rule question is transcended, there being a substantial federal--that is, national interest:
 - a. A wrongful, harmful sure of a moral nature undermines the moral fiber of individuals as well their health and general welfare, and turn undermines both the moral health and welfare of the community and the entire nation. This is all the more serious when that community is the nation's capital because--
 - i) it undermines the efficiency and image of the federal government--which is the largest industry here. A 1950 Senate committee report stated: one homosexual "tends to have corrosive influence upon his fellow employees", one reason being "frequent" attempts at enticement (Sis Cong., Doc.241, p.4).
 - ii) it reflects adversely upon the image of the entire nation (cf. "Is DC Becoming the Gay Capital of America?", Washingtonian, Sep. 1980)
 - iii) it will have a corrupting influence on tourists and tourism--the second largest industry here of "The Boy-Whore World: Male Prostitutes Work D.C. Street Corners, The Washington Post, 10-7-80). Tourists here from every state solely because it is the capital, and should not find a more corrupting environment than in their home state.
 - iv) it will set a bad precedent for other States to follow. The proponents of the sex reform bill even use the precedent argument for its passage on the ground a number of State have "modernized" their penal code in this way and D.C. should follow. But we reply this act is no reform, but actually socioeconomic regression which the nation's capital should not encourage but rather should discourage by refusing to go along with it.

THEREFORE, IF THE LOCAL GOVERNMENT DOES NOT HAVE THIS CONCERN AND CONVICTION, THEN IT IS WELL FOR THE U.S. SENATE AND U.S. HOUSE OF REPRESENTATIVES TO EXERCISE IT. HENCE EACH SENATOR AND CONGRESSMAN OUGHT TO LOOK INTO THE PRECISE NATURE AND EXTENT OF HARM THIS SEX REFORM ACT MAY CAUSE, AND RECORD HIS VOTE ON IT--IRRESPECTIVE OF HOME RULE CONSIDERATIONS.

Compendium of Arguments Against Legalizing Sodomy, Adultery, Fornication

The author, with an educational background in law and theology, has extensively researched and written on the subjects of homosexuality, prostitution, divorce. Following are sketches of four aspects of homosexuality, much of which also pertains to illicit--that is, nonmarital--heterosexual misbehavior.

I. THE AUTHORITIES CONDEMNING HOMOSEXUALITY

i) The Law of Nature. Homosexuality makes unnatural use of bodily organs. ii) Intuition. See Romans 2:15. iii) Divine Manifestations. See Romans 1:19,20,32. iv) Conscience. v) Sense of shame. vi) Holy Scriptures. See Lev. 18:22. vii) Jesus Christ, who stated the only sexual choices are monogamous male-female marital sex or celibacy (Mt.19:3-13). viii) Human reason, which, when operating aright--cf. 1 Cor. 2:14--affirms the reasonableness of the Biblical rationale. ix) Internal consequences. Those practicing homosexuality develop physiological and psychological aberrations: unnatural walk, talk, mannerisms, fixations, which are called "the recompense that was befitting their error"--Rom.1:27). They are visible proof of God's condemnation and punishment. x) The Church, which until recently uniformly condemned homosexuality. xi) Legislative history. Until recently homosexual acts were unlawful in every State as a threat to public health, welfare, safety, morals. xii) External judgments of God. The classical example is the fire ruined on Sodom for the sins with which the name Sodom is still associated today (Jude 7). Specifically sexual sins defile the land, bringing upon it God's judgments (Lev.18:22-30): diseases, unrest, economic woes, apathy, natural disasters, pestilence, internal strife, warfare.

II. THE ADVERSE ASPECTS OF HOMOSEXUALITY

a) Psychological. Homosexuality has all the psychological characteristics of a vice. It is addictive: the longer practiced, the more compulsive it becomes, and the more bizarre and despicable forms it takes. Ongoing practice produces anxiety, guilt, fears, nervousness, remorse, instability--despite an outward air of a gay, carefree, glamorous life. Also widespread: insecurity, depression, pride, loneliness, malevolence, jealousy. In addition, it reflects a high rate of mental disorder consisting of irrationality, unreliability, impulsiveness, suicidal tendencies, spendthrift, transiency, deception, crime.

b) Social. Homosexuals form a distinct subculture with their own vernacular, dress, etc. which reflects an underlying antagonism to heterosexuality. They seek nondiscrimination and nonharassment, but they themselves are highly discriminatory, harassing, disruptive. Without disclosure and for sake of appearance, they marry and have offspring; but when the pretense becomes burdensome, they divorce, leaving family members shattered. They insist on "full" rights: to show affection in public, to marry, to adopt children, to get access to media, libraries, education courses as a legitimate alternate lifestyle.

c) Economical. The business world regards homosexuals as more accident prone, a greater financial and security risk, of higher job instability. Yet they demand access to every kind of employment, including close-contact positions: hospitals, recreation, police, prisons, military, youth activities, teaching positions--and sensitive positions (FBI, CIA).

d) Medical. Being unusually sexually active and promiscuous, VD is high among them. Their sexual aberrations regularly cause psychoneurotic symptoms--compulsions, fetishes, involuntary fixations--difficult to dislodge. They have greater alcohol and drug abuse.

III. REFUTING HOMOSEXUAL FALLACIES

Homosexuality is not a natural innate condition, for it has no valid rationale as has heterosexual sexuality (marital oneness and procreation). Although homosexual tendencies may be inherited, so are other tendencies to asocial, immoral behavior which one should learn to eliminate: aggressiveness, overeating, sloth, kleptomania, pyromania. There is ample evidence of the growing problem of homosexual recruitment of and demand for minors (e.g. "60 minutes" on 5-15-77 disclosed male homosexuals accounted for a large per cent of the consumers of child pornography and patrons of male hustlers; a Time article stated "male prostitutes who are teen-age or younger are greatly in demand, particularly by older married men" (9-8-75)).

IV. HOMOSEXUALITY AND THE LAW

Because marriage-and-family is regarded as the solid foundation of an enduring, prosperous society, the state has a compelling interest in safeguarding the marriage institution and marital stability from the threat of a) extramarital sex, and b) a decline in eligible males and females. As sex laws are loosened, divorce rates keep rising.

Then there is the problem of containing the spread of disease and sex-related crime, and of making places safe from solicitation and offensive conduct (especially in the capital).

All the arguments for legalization of consensual, adult, noncommercial, nonpublic sex miss the main point, which is that homosexual as well as nonmarital heterosexual sex activity is intrinsically evil. It is specifically named in the Bible as activity to be outlawed (1 Tim. 1:10). Thus, if legalized, it still undermines morality, health, safety, and general welfare--even if done in private. As one law review article noted: legalization "may reflect societal acceptance." Clearly the educative and deterrent impact of the law is removed--at least for some (usually the weak, the ignorant, the gullible, the young).

Consent to sex among adults is no valid exception because in certain personal cases basic values are involved that must be protected against any encroachment. Thus euthanasia, incest, bigamy, dueling, homicide are crimes regardless of consent. Besides, the D.C. age of consent is still far too low (i.e. 16). The liberal Model Penal Code suggested 18. The British Wolfenden Report suggested 21.

A 1980 survey disclosed 42% of women federal employees claimed sex harassment on the job, with 4 out of 5 being from males (Washington Star, 9-25-80). Making noncommercial solicitation for sex (whether heterosexual or homosexual) a crime and making homosexual and extramarital sex acts crimes afford protection to those who want it (it is not primarily a matter of policing the privacy of bedrooms).

TESTIMONY IN FAVOR OF H. RES. 208

BY
GARY L. JARMINLEGISLATIVE DIRECTOR
CHRISTIAN VOICE

SEPTEMBER 24, 1981

Mr. Chairman, I appreciate the opportunity to testify before this committee on behalf of H. Res. 208, a resolution to disapprove of D.C. Act 4-69. I represent Christian Voice, an organization of 300,000 Christians across the country who are concerned about the need to reinforce morality and decency in our Nation's laws and institutions. I urge this committee to approve Rep. Crane's resolution because I am concerned about the impact D.C. Act 4-69 will have on this community which houses the seat of government of our great nation, as well as the repercussions it will cause throughout the state and local governments across the nation.

This legislation not only imposes a morally negligent environment upon the District of Columbia, but in doing so also conveys an impression to the citizens of the United States of America, "One Nation Under God", that the prevalent attitude of moral permissiveness is socially legitimate. Contrary to the mistaken opinions of members of Council of the District of Columbia, I believe that most conscientious citizens consider this attitude morally offensive and an affront to their Creator. Even the citizens of the District of Columbia are not overwhelmingly supportive of this Act. A considerable portion of District citizens do not want these morally lax reforms attached to the Criminal Code of the District. Indeed, as witnessed by the testimonies and statements of many civic and religious leaders of the District, these so called reforms are as abhorrent to citizens of the District of Columbia as they are to the rest of the nation.

The objectionable provisions of the bill are as follows:

D.C. Act 4-69 effectively removes all sanctions against homosexual conduct in the District, including the sodomy statute under which former Rep. Jon Hinson was arrested. It will legalize

the seduction of and sexual advance toward a minor by a school teacher, and reduce the penalty for forcible rape from life imprisonment to twenty years in jail. This Act also narrows considerably the statute for the suppression of prostitution, both heterosexual and homosexual, and repeals the prohibitions against adultery, fornication and bestiality.

I fail to see the positive reformatory nature of this piece of legislation, aside from a few minor changes which extend to males under the age of sixteen the same privileges and protection already given to females of that age. I have no objection to this provision. Nevertheless, the District Council could have accomplished that specific reform by passing a considerably simplified version; instead of which they offered this provision as an inducement for approval of the extra garbage which probably could not have passed otherwise.

I adjure members of this committee and members of Congress to assert their authority and responsibility to exercise legislation over the District of Columbia as granted in Article 1 Section 8 of the Constitution of the United States. Certainly the Constitutional fathers recognized that the affairs of this Nation's capital are of concern to every citizen of the United States.

I see no reason to needlessly open a veritable Pandora's box of criminal reforms which could adversely affect the moral and social environment of this country.

One argument in support of these reform proposals is that they are not realistically enforceable. Perhaps it is not feasible to enforce the statutes prohibiting fornication or adultery. Nonetheless, these sanctions reflect the moral code given to Christians by our Creator. The Holy Bible is implicit in its condemnation of sex outside the sanctity of marriage. For men to blithely waive aside these commandments as inconsequential is unforgivable and beckons the righteous indignation of Christians. Removal of these statutes serves to condone practices which are unacceptable to mainstream Americans.

I fear that the enactment of this piece of legislation will serve as a landmark to publicly acknowledge homosexuality and

other deviate sexual practices as legitimate lifestyles. I believe I speak for most Americans when I say that we are not and never will be prepared to approve or accept the open practice of homosexuality. For too long our nation has been subjected to an aggressive and militant campaign by homosexuals to recognize their acts as morally legitimate, and to give official sanction and protection under law for those who engage in this immorality. D.C. Act 4-69 would certainly lend credence to their claim. It is hard to imagine a law more perverse and immoral in its content and intent than this Act. By removing all prohibitions against sodomy, fornication and adultery the District government is sanctioning all homosexual and heterosexual activity or expression without restriction. Particularly, this type of unleashed homosexual expression is often accompanied by disastrous social consequences. In the city of San Francisco, one out of every ten homicides has some homosexual connection. Washington, D.C. is rapidly acquiring a reputation for being a homosexual haven, apparently with the benevolent permission of Mayor Barry and the rest of the District Council. This Congress will share in that dishonor unless it heeds these words of caution spoken today, and votes in favor of Rep. Crane's proposal.

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THE CHILLUM HEIGHTS CITIZENS
ASSOCIATION

Testimony of the Chillum Heights Citizens Association

Regarding D.C. Act 4-69.

To the House District Committee

September 24, 1981

The Chillum Heights Citizens Association, organized in 1895, opposes the action of the D.C. Council and the Mayor in adopting and sending Act 4-69 to the Congress of the United States.

We believe our citizens were denied due process of law. The citizens were not made aware of what the Act 4-69 contained. Even in reading the bill there were no explanations of amendments, but only the numbers of the sections of the old code. (How many of us have the old code available and how many of us are lawyers?)

There seems to have been a conspiracy of silence, even by the press, to cover up this action. We question why our Police Department, Corporation Counsel and the U.S. Attorney made no mention at any time of the provisions to which we now so strenuously object.

We question the authority of the D.C. Government to destroy the values and the laws established over centuries of civilization for the protection of the family.

This Act in its present form is a threat to our youth and our families and our youth and would bring about more disease, broken homes and ruined lives.

We are forced to believe that the deceit practised upon us was deliberate. For proponents to defend this scandalous action on the basis of Home Rule is a mockery. In this case Home Rule would bring "home ruin".

We petition Congress to disapprove Act 4-69. To allow it to be given the sanction of Federal Law in the Capital of our Nation would be a national and international disgrace.

Respectfully submitted,

Earl M. Otto

President of the Chillum Heights
Citizens Association of
the District of Columbia.

NEWS ARTICLES RE SEXUAL ASSAULT REFORM ACT

THE WASHINGTON POST
July 15, 1981

ncil Passes Bill Leaving sent Age 16

by Keith B. Richburg
Washington Post Staff Writer

D.C. City Council gave its final approval yesterday sexual-assault law that does is the controversial propo-

line sex between consenting if about the same age. ity change in the bill as it y approved came without hen Council Chairman Ar-

Dixon, using a parliament- never, broadened the city's rape law so that it would

rape as well as girls. ny's final approval was ne and rapid — in marked o the council's emotionally

state on the bill two weeks one spectator was evicted

ing the raucous meeting. ne being at least, it puts to

ntroversial age-of-consent had sidetracked the coun-

consideration of the reform a whole.

Bill will now go to Mayor

wry, who is expected to

COUNCIL, B4, Col. 1

Council Approves Sex Bill

COUNCIL, From B1

sign it, and then to Congress for a 30-day review period after which it will become law.

In a separate voice vote, the council temporarily avoided another politically thorny issue by extending for 90 days the city real estate speculators' tax, which expired Monday after three years of criticism from real estate dealers and praise from tenant organizations.

That bill essentially imposes a heavy tax on persons who sell property shortly after they buy it. Its enactment has been opposed by real estate professionals who argued that current high interest rates were already enough of a deterrent to speculative buying and selling.

The sexual-assault bill includes a number of significant changes. For instance, the new law would delete all reference to sodomy as a criminal offense, a change that Washington's homosexual community has sought for more than a decade.

It also would legalize adultery and fornication between consenting adults while making illegal sex with intoxicated persons or persons physically or mentally incapable of resist-

ing. Supporters of the sexual-assault reform effort had feared that the entire measure might be stalled because of opposition to changing the statutory rape law so that under certain circumstances consenting children between 12 and 16 years of age could have sexual intercourse. That change had been proposed by Council member David A. Clarke (D-Ward 1).

That change was initially supported by the council's Judiciary Committee, of which Clarke is chairman, and by six of the 13 council members. But after newspaper reports detailed how the bill would in effect legalize many instances of consensual teen-aged sex, some community members and church leaders mobilized to oppose it. The council members quickly backpedaled and voted two weeks ago to let the current statutory rape law stand.

Dixon said that by making the statutory rape law, which now prohibits anyone from having sexual intercourse with a girl under 16, apply to boys as well as girls was merely in keeping with the general tone of the entire sexual-assault bill. The new bill deletes most references to gender.

Congress Asked to Override. D.C. Sex Liberalization Bill

By Jack Eisen

Washington Post Staff Writer

An effort by a coalition of community and religious groups to persuade Congress to overturn a D.C. City Council measure that would legalize most homosexual acts will have its first test today on Capitol Hill.

The House District Committee will hold a hearing on a resolution by Rep. Philip M. Crane (R-Ill.) to kill the sexual liberalization measure.

A Senate Governmental Affairs subcommittee has scheduled a similar hearing next Wednesday on an identical resolution sponsored by Sen. Jeremiah Denton (R-Ala.).

A veto by either chamber of Congress would kill the council-passed bill.

The controversial measure, among other things, decriminalizes a number of heterosexual and homosexual acts, including sodomy, between consenting persons at least 16 years old.

The latest organization to ask Congress to overturn the measure is the mostly-black D.C. Federation of Civic Associations. In a letter to congressional leaders, its president, Arthur V. Meigs, attacked what he called the council's "steamroller legislative procedure"

The federation's mostly-white counterpart, the Federation of Citizens Associations, has voiced a similar position. The most publicized attack has been by Moral Majority president Jerry Falwell, who was joined by the D.C. Baptist Ministers Conference.

Catholic Archbishop James A. Hickey also attacked the bill, asserting in an open letter that many sexual acts legalized by the measure are immoral and "the withdrawal of civil prohibitions and penalties does not make them morally permissible."

Use Panel tolds D.C. Bill on Sex

By Jack Elson
Times Post Staff Writer

House District Com-
mitted yesterday to
the D.C. City Coun-
cil of a bill that
reform the city's
act of sexual assault
and legalize most homo-
sexual acts among consenting

though the action was a
for a coalition of
opposing the bill,
from local citizens
and federations to the
very Federal's conser-
vational Moral Major-
s dear remains open
is congressional allies
these their push for a
r the House floor and
Senate.

the yesterday's 8-to-3
as by the District
fides of the resolution
rushed the council bill,
C. Home Rule Charter
is the resolution's
r to ask the full House
are the committee ac-
ed seek a vote on the
An aide to Rep. Philip
step (R-Ill.), the spon-

sor, said Crane plans to make such a
move, probably next week.

Also next week, a Senate Govern-
mental Affairs subcommittee will
hear testimony and possibly vote on
an identical measure, sponsored by
Sen. Jeremiah Denton (R-Ala.).

To veto most council-passed leg-
islation, both chambers of Congress
must adopt a resolution of disap-
proval, but when council legislation
would amend the city's criminal
code, as the sexual assault bill would
do, only one house must do so.

Only once in 6 1/4 years of limited
home rule has Congress vetoed a
council act. That was in 1979, when
it killed a bill opposed by the State
Department that would have severe-
ly restricted the city's power to reg-
ulate the location of foreign govern-
ment chanceries.

The sexual assault bill, in addition
to redefining rape and other sexual
crimes and revamping the penalties
for violations, would decriminalize a
number of heterosexual and homo-
sexual acts, including sodomy,
among consenting persons at least 16
years old. Based on model national
legislation, it was widely supported
by gay rights groups and women's
organizations.

The total bill generally is aimed at
broadening criminal penalties for
sexual assault and diminishing pen-
alties for sex between consenting
parties.

It also drew outspoken opposition
from such groups as the D.C. Fed-
eration of Civic Associations, the
D.C. Federation of Citizens Associ-
ations, the Moral Majority and the
D.C. Baptist Ministers Conference.
Catholic Archbishop James A. Hick-
ey also attacked the bill, but has not
joined the campaign to seek a con-
gressional veto.

Spearheading opposition to the
effort to veto the legislation is a
newly formed coalition, Citizens for
Home Rule, composed of leaders of
civil rights, religious and citizen
groups. Its spokesman, Joe Tom
Easley, a law professor, said the
group is enlisting support from con-
servative as well as liberal organiza-
tions.

Testifying during the two-hour
District Committee session that pre-
ceded yesterday's vote, D.C. Mayor
Marion Barry contended that citi-
zens who are seeking a veto "are in
the minority." He called the vote a
victory for home rule.

The testimony and discussion
contained few hints of the emotions
evoked by the bill. Rather the hear-
ing focused narrowly on whether the
council, by passing the measure, had
exceeded its legal authority, and
whether there was an overriding fed-
eral interest in the legislation.

Citing precedents, Rep. Ronald V.
Dellums (D-Calif.), the committee
chairman, ruled out testimony on
the substance of the sexual assault
bill itself, although two of its oppo-
nents — Reps. Thomas J. Bliley (R-
Va.) and Romano L. Mazzoli (D-
Ky.) — raised questions about some
provisions. Bliley contended that the
thousands of visitors to the nation's
capital constituted a strong federal
interest in the legislation.

Voting against the veto resolution
were Dellums, Del. Walter E. Faunt-
roy (D.C.) and Reps. Fortney H.
Stark (Calif.), Mickey Leland (Tex-
as), William H. Gray (Pa.), Michael
D. Barnes (Md.), Mervyn M. Dy-
mally (Calif.), all Democrats, and
Stewart B. McKinney (R-Conn.).
Supporting the measure were Bliley,
Mazzoli and Marjorie Holt (R-Md.).
Stanford E. Parris (R-Va.) was ab-
sent and did not vote.

D.C. Sexual Law Under Fire

Hill Campaign Called Threat to Home Rule

By Michael Isikoff

Washington Post Staff Writer

A group of conservative congressmen, bolstered by an unusually heavy lobbying campaign by the Moral Majority, intends to force floor votes in both houses of Congress today on resolutions to overturn the District of Columbia's sweeping new sexual assault law.

D.C. officials and local citizen groups have warned that the resolutions pose the greatest threat yet to self-government in the city, because they seek to strike down an exclusively local act, an action the full Congress has never before taken during the city's six-year experience with limited home rule.

But the efforts of the Moral Majority, which has sent out several hundred thousand mass mailed "alerts" to members around the country, may be having some impact in favor of the resolutions, congressional staffers said yesterday.

A spokesman for the Citizens for Home Rule, a coalition of local groups working against the resolutions, said the vote "looks very tight" in both houses.

The Moral Majority lobbying effort intensified yesterday as a leader of the Washington-based organization called the resolutions the group's top priority in Congress and threatened members with political consequences if they fail to support them.

"The District's sex act is what I term a perverted act about perverted sex," Dr. Ronald Godwin, the Moral Majority's vice president, told the Senate D.C. subcommittee yesterday. "Make no mistake, a vote against [the resolutions] is a vote for sodomy, bestiality, fornication, adultery and seduction of a student by a teacher."

The subcommittee, chaired by Sen. Charles McC. Mathias (R-Md.), conducted a 2½-hour hearing on the resolutions yesterday, but adjourned without taking a vote. The House District Committee voted last week against the resolution, but supporters of the resolution in the House say they will attempt to discharge the measure from the committee so the full House can vote today.

Godwin, who said the Moral Majority had plotted its lobbying strategy against the D.C. law at an annual "summit conference" in the Bahamas last week, said later that the conservative organization intends to monitor closely how congressmen vote. "We intend to let their constituents know what their elected representatives do on this one," he said.

Not all conservative organizations have supported the Moral Majority, however. John T. Dolan, director of the National Conservative Political Action Committee and a "New Right" leader, has broken publicly with the Moral Majority and urged that the sex assault law be sustained. Members of Citizens for Home Rule have recently distributed copies of a newspaper article quoting Sen. Barry Goldwater (R-Ariz.) blasting the tactics of "political preachers" and "every religious group that thinks it has some God-granted right to control my vote."

The Moral Majority's tactics also were attacked at yesterday's hearing by City Council member David Clarke (D-Ward 1), the chairman of the council's Judiciary Committee and chief author of the sexual assault act. He noted that most of the states in the country have provisions similar to those in the D.C. act that supporters of the resolution have attacked.

For example, the Moral Majority has criticized the D.C. act because it repeals statutes prohibiting adultery, fornication and sodomy among consenting adults. But Clarke said that 40 states have no criminal penalties against fornication and 25 states have no criminal penalties against adultery or sodomy.

"The Moral Majority seems to think that any point of view other than its own is a sin," said Clarke. "I haven't seen where Dr. [Jerry] Falwell [president of Moral Majority] has gone to states where they have similar laws and asked that they be changed."

The act, which at one time contained a provision changing the city's age of consent for sexual relations, also would stiffen penalties for forced sexual offenses.

The resolutions to overturn the act are expected to be brought up today by Rep. Phil Crane (R-Ill.) in the House and Sen. Jeremiah Denton (R-Ala.) in the Senate. Under the 1973 home rule act, Congress can overturn any law passed by the City Council and signed by the mayor with a majority vote of both houses, although laws dealing with the criminal code, such as the sexual assault act, only require a majority vote in either house for disapproval.

Sat., October 2, 1981

THE WASHINGTON POST

Lopsided House Vote Overturns District's Sexual Reform Law

By Michael Isikoff and Eric Pianin
Washington Post Staff Writers

The House of Representatives yesterday struck down the District of Columbia's recently passed sexual assault reform law, dealing what city leaders termed one of the most serious setbacks yet to the independence of Washington's six-year-old home rule government.

The 281-119 rejection of the measure marked the first time that Congress has overturned a locally approved D.C. law that had no apparent bearing on the so-called federal interest that theoretically gives Congress veto power over local legislation in the nation's capital. Action by only one house of Congress was needed to kill the bill.

The campaign against the measure was led by the conservative Moral Majority, which together with several local clergymen and citizens' organizations mounted a massive nationwide lobbying effort to repeal a bill that they said was a perverted measure that offended Congress and the American people.

The bill would have reformed the city's patchwork of sexual assault laws and legalized sexual acts between consenting adults, but its opponents focused on changes in the fornication, adultery and sodomy laws.

Yesterday's vote capped a series of defeats for the city in its relations with the Congress, including House action last week that effectively outlawed a police hiring plan ordered by Mayor Marion Barry, thwarted a city proposal to ship sludge to Pennsylvania and wiped out funding for a gambling lottery approved by city voters in a referendum last fall.

District officials and some of the city's strongest congressional sup-

porters reacted with anger to yesterday's vote, denouncing it as a dangerous attack on self government in the city.

"I am outraged that Congress would not respect the local home rule process," Mayor Marion Barry said shortly after the vote. "It's setting a dangerous precedent for the Congress to overrule on a matter that has no federal impact and is not unconstitutional."

Rep. Ronald V. Dellums (D-Calif.), chairman of the House District Committee, had tried in vain earlier to have the measure of disapproval tabled on the House floor, then threatened to tie up the House for five hours of debate. But Dellums did not have the votes to prevail.

"It's very frightening," Dellums said later. "It shows that home rule is a total sham and a fraud, it's an outright lie. The city of Washington should walk down here and say either we're free or we're not. And if we're not, then repeal the Home Rule Act. That would at least be honest."

The vote was loudly cheered by the Moral Majority, whose leaders had sent out more than 800,000 mailing alerts all over the country urging its defeat.

Dr. Ronald Godwin, the Moral Majority's vice president, said it represented his group's biggest victory on Capitol Hill. He said congressmen feared public exposure by his organization if they supported the law, and he termed it "a victory for morality and common sense."

"The members of Congress didn't want to run for reelection in 1982 with a vote on the record for bestiality, sodomy and fornication. We intended to let the people know how their representatives voted on this."

Godwin said the organization would continue to pressure the City Council if it attempts to pass a similar law. "We're not going to go to sleep, we're going to monitor this very closely . . ." he said. While city officials criticized the Moral Majority for alleged fear tactics, local community organizations who opposed the law praised the congressional action.

"This is a great victory for grassroots democracy against the oligarchy of the City Council," said Stephen Koczak, president of the Federation of Citizen Associations for the District of Columbia, one of the two principal citizen group coalitions in the city. The other, the D.C. Federation of Civic Associations, also was opposed to the sexual assault reform measure.

Koczak added, "We invited the Moral Majority in on this because the people in this city were opposed to it. We got 10,000 people to sign petitions that we gave to the Congress."

The bill was passed by the council in July after a week of emotionally charged debate among council members and in the city on the council's role in so-called moral issues and on a provision that effectively would have lowered the age of consent for sexual acts between children. That proposed change was eliminated, and Barry signed the bill.

The measure also contained sections that decriminalized homosexual acts, sodomy, fornication and adultery between consenting adults. It also allowed wives to press rape charges against their husbands, removed all references to the sex of the victim from assault laws, and lowered the penalty for rape from life imprisonment to 20 years.

Lopsided House Vote Overturns District's

Sexual Reform Law—Continued

That proposal had been recommended by women's groups who said it would make it easier to convict accused rapists.

The law, however, drew immediate fire from the Moral Majority, other Christian evangelical groups and The Most Rev. James A. Hickey, archbishop of Washington.

Resolutions to overturn the law were introduced by Rep. Phil Crane (R-Ill.) in the House and Sen. Jeremiah Denton (R-Ala.) in the Senate — a procedure allowed for under the 1973 Home Rule Act, which permits either house to disapprove a council-passed bill altering the city's criminal code within 30 working days of its transmittal to the Congress.

The only previous action by Congress overturning a District law came in December 1979, when the House and Senate rejected the city's attempts to restrict embassies from locating their chanceries — or office buildings — in residential neighborhoods.

The sex reform law drew strong opposition on Capitol Hill, even though many of its provisions were identical to — and in some cases less liberal than — those in the home states of many of its congressional detractors.

During yesterday's debate, Crane called the bill "a substantial improvement" in the city's criminal code that was "unfortunately laced with a handful of objectionable proposals that makes it totally unacceptable to most of the residents of the community and, more importantly, the majority of the people of the country."

Dellums led the fight against the proposal, angrily insisting that it was improper for Congress to even dis-

cuss the measure. "I will not and I shall not engage in any debate on the substance of this legislation," he shouted. "This body is not competent to be the City Council of the District of Columbia. This debate has achieved the level of absurdity."

After the vote, City Council Chairman Arrington Dixon said the council might consider revising the package of reforms to address some of the concerns expressed by congressional opponents.

Dixon said the congressional rejection was frustrating. But, he added, "I don't want this to become a cause celebre. There are other more important things that we need to focus on and to move forward."

A host of local organizations had joined city officials in opposing rejection of the measure. They were equally disappointed yesterday.

"If the Congress can strike down this, there isn't anything they can't do to us," said Frank Gallo, a member of Citizens for Home Rule, a coalition of local groups supporting the assault reform measure. "We're a puppet state, a satellite state of the Congress."

The vote was also a particularly crushing defeat for the city's gay community, which had strongly supported the decriminalization of homosexual acts between consenting adults set out in the act and launched a last-minute lobbying effort in Congress.

An embittered Steve Endean, executive director of the Gay Rights National Lobby, called the vote "utterly ridiculous." He said, "Two-thirds of the guys in this Congress will go out and engage in the same types of acts that they denounced on the floor today."

THE NEW YORK TIMES
October 2, 1981

House Kills Measure Of Capital's Council To Erase Sex Curbs

WASHINGTON, Oct. 1 (AP) — The House, reacting to pressure from fundamentalist religious groups, today killed a District of Columbia bill that would have legalized most sexual acts between consenting adults.

The action, on a 281-to-119 vote, means that the city retains laws permitting sexual relations only between married partners in a face-to-face position.

It was the first time Congress had overturned a measure passed by the City Council that did not clearly tread on Federal prerogatives. Supporters of the District's six-year-old home rule charter condemned the Federal interference in local affairs.

"It's a cheap vote to give the Moral Majority," said Representative Joel Pritchard, Republican of Washington, referring to the evangelical Christian group. The vote would not affect constituents, he said, but members of Congress would still be able to score points with the Rev. Jerry Falwell, president of the group.

'Not a Matter of Home Rule'

Representative Philip M. Crane, Republican of Illinois, led the five-hour floor fight to kill the measure.

"This is not a matter of home rule," he argued. Mr. Crane acknowledged the city's proposal included some worthwhile reforms but said it was "unfortunately laced with a handful of provisions that are so onerous" that Congress would "abdicate its responsibility" by not exercising its veto power.

The sex reform bill would have removed penalties for sexual conduct between consenting adults in private, including homosexuality, sodomy and adultery.

Opponents of the bill emphasized the legalization of homosexual activity and the reduction of the penalty for forcible rape from life to 20 years.

"We have lost sight of the moral codes," argued Representative Daniel B. Crane, Republican of Illinois. "The time has come for all God-fearing people to stand up and be counted."

Ronald V. Dellums, Democrat of California who is chairman of the House District of Columbia Committee, challenged opponents of the measure to seek national legislation instead of picking on the district. "That would at least be more honest," he said.

THE WASHINGTON POST
October 3, 1981

Path of the Least Resistance

D.C. Sex Reform Fell Victim to Pressures on Congress

By Michael Isikoff
Washington Post Staff Writer

The day that the Rev. Jerry Falwell of the Moral Majority launched his crusade to kill the District of Columbia's new sexual assault law, the phone lines lit up in the offices of the House District Committee.

"It was unbelievable, we never saw anything like it before," said John Gnorski, minority staff director of the committee. "We must have gotten calls from staff people in more than 200 offices. And it was obvious that most of these people didn't even understand why the Congress was even considering a local D.C. law."

Those phone calls were the first signs of the intensive nationwide campaign by Moral Majority and other conservative Christian groups that this week led the House of Representatives to take the unprecedented step of overturning a local measure passed by the D.C. City Council and signed by the mayor.

But the calls also illustrate the congressional attitude toward the District which, many members and staffers said yesterday, made such a vote possible.

The lobbying against the sex law was undoubtedly heavy and fierce. Rep. Stanford Parrish (R-Va.), for example, received more than 700 phone calls and letters from constituents demanding that he vote against the bill.

But that lobbying was only successful because most members have little knowledge of and pay scant attention to the affairs of a city that carries no political weight in their home districts.

If there are no gains for supporting the city in the face of constituent pressure, there is, as the Moral Majority's lobbying showed, a price to be paid.

"It's easy to take a shot at the District of Columbia," said Rep. Michael Barnes (D-Md.), a member of the District Committee who was on the losing side of Thursday's 281-119 vote to veto the sexual assault reform law.

"It's a no-lose vote for a member because their constituents don't care," Barnes said. "In this case, there was a fear by a lot of members that they would be seen to be voting in favor of sexual perversion. So what they did was take the easy way out, take the course of least resistance."

As a result, many members were reluctant to interpret the sex law vote as a sign that the Moral Majority had emerged as a powerful new lobbying force on Capitol Hill. This, said an angry Rep. Ronald V. Dellums, (D-Calif., chairman of the House District Committee, was a "cheap vote" to give Falwell.

"If you have groups in your district asking you to vote against something to do with the District, why should you go against them?" added one committee staffer yesterday. "They just wanted to let the Moral Majority off their backs. They didn't care one way or another about the District."

The degree of ignorance about District affairs in general and the sex law in particular was perhaps best illustrated during the course of Thursday's debate when Rep. Ronald Marlenee (R-Mont.) took the floor to launch a

See DISTRICT, B3, Col. 1

Moral Majority Pressure Doomed City's Sex Law

DISTRICT, From B1

brief tirade about the city's soaring crime rate, noting that several friends from Montana had been recently mugged or robbed in the city.

"I'm mad about crime," he shouted. "I think it's time we tell the District to clean up its act."

Rep. John Conyers (D-Mich.) immediately interrupted to ask Marlene why the city's crime rate would be affected one way or another by the sexual assault reform bill then before the house. But before Conyers could finish, the burly Montanan had left the floor - only to return hours later to vote against the sexual assault bill.

There were other factors that explain the overwhelming margin of the House vote. Some staffers blamed Mayor Marion Barry and District officials for failing to "do the legwork" necessary to explain the bill's provisions.

Others cited a growing congressional hostility toward the city brought out by a string of city-enacted measures that run counter to the prevailing conservative mood on Capitol Hill, including a voter-approved city-run lottery and numbers game and a change in hiring procedures for police ordered by Mayor Barry in an effort to increase affirmative action. Both of those actions were effectively nullified by the House.

"There are probably about 300 members of the House who are so fed up with the District right now that they'd vote against the city on anything," said Dick Leggett, an aide

to Parris, who has spearheaded several successful efforts to nullify city actions.

Thursday's defeat leaves the city with a patchwork of antiquated sex laws including statutes, dating back to 1901, banning fornication, adultery, and sodomy between consenting adults. But there seemed little chance yesterday that the sex bill, which would have reformed those laws, will be revived any time soon.

Council member David A. Clarke (D-Ward 1), chairman of the Council's Judiciary Committee, who had worked hardest for passage of the legislation, was among the most embittered city officials yesterday.

"We'll let the dust settle," Clarke said. "But what does the Congress want us to do? I introduced this bill in the first place because the Congress asked me to. They asked us to pass it and so we did."

Clarke was referring specifically to the recommendations of a congressionally created Law Review Commission that had been forwarded to the council two years ago by the chairmen of two congressional subcommittees.

Those recommendations, Clarke pointed out, were virtually identical to the sex bill proposals that had been shot down by the House on grounds that it would have sanctioned homosexuality, sodomy and fornication in the nation's capital.

"What Congress tells us to do obviously doesn't mean a damn thing anymore," Clarke said. "I don't believe the Congress."

William Raspberry

Sex Bill Fiasco

Last week's House action in striking down the District's sex reform law has been widely attacked as a congressional assault on local home rule. It has also been held up as an example of the demagogic power of the Moral Majority.

It is both those things. But it is also a frontal assault on common sense. The proposal shot down by a timid House of Representatives represented important legal reforms. It offered important new protections. It was good law.

The emphasis, perhaps naturally, was on homosexual activity. The bill would have decriminalized homosexual acts between consenting adults. But it would also have decriminalized certain heterosexual acts between consenting adults. It was an effort to get the law out of the bedroom.

Under the present law, for instance, both parties to a sexual act between a married woman and a single man are guilty of adultery and subject to a fine of up to \$500 and a year in jail. If he is married and she is single, only he is guilty of adultery. Does that make sense?

Under the present law, two single adults who engage in "normal" sex acts are guilty of fornication and subject to six months in jail and fines of \$300. Does that make sense?

Under the present law, a man and wife who participate, both willingly, in unorthodox sexual behavior are guilty of sodomy and can go to prison for 10 years. Does that make sense?

Under the present law, adult homosexuals who engage in sexual activity, no matter how privately, are guilty of sodomy and subject to 10 years' imprisonment. Does that make sense?

No doubt many Washingtonians (and members of Congress) who are criminals under the law the city tried to reform don't take these archaic statutes seriously because they know they are unlikely to be prosecuted under them. But that hardly suffices as a reason to keep absurd laws on the books.

Some of the laws the reform bill would have corrected are not quite so benign. Under the current law, for instance, a woman must prove fear of "grave bodily harm or death" in order to convict her attacker of rape. The reform measure would have changed the requirement to a fear of "significant" bodily harm and, in addition, would have allowed a rape conviction on the ground that her assailant threatened the safety of others—her small children, for instance.

Under current law, a man cannot rape his wife. A man who drugs a woman without her knowledge and then proceeds to take advantage of her is not guilty of rape. A man—a jail inmate, for instance—cannot, under the present law, rape another man. A guard who coerces a

prisoner into a homosexual act can be found guilty only of sodomy.

The reform proposal would have degenderized sexual offenses while making them easier to prosecute.

Perhaps the most controversial section of the proposal (aside from the effort to redefine statutory rape, withdrawn by the city council last summer) would have stricken the "seduction by a teacher" provision of the existing law. That provision prohibits any male teacher over age 21 from having consensual intercourse with any female student between the ages of 16 and 21. (If she is under 16, she is protected under the statutory rape section. If he is not her teacher, he is guilty only of fornication.) The "seduction by a teacher" provision, on the District's books since 1901, has never been used, according to legal researchers. The reform measure would have eliminated it.

Even the statutory rape section, which the council abandoned after it generated so much public controversy, made sense. Far from "legalizing" sex between juveniles, as the news media (including this one) characterized it, the proposal simply would have held consensual sexual relations between two juveniles of substantially the same age not to be statutory rape. The point wasn't that it is perfectly all right for a 16-year-old boy to sleep with his 14-year-old girlfriend, only that he shouldn't go to prison as a rapist for doing so.

This same confusion between legalization and decriminalization—the difference between saying it's okay and saying we won't send you to jail for it—is what led to the defeat of the council-passed reform bill. But this time the confusion was deliberately sown. The Moral Majority's Jerry Falwell was less concerned to examine the contents of the legislation than to get off a few rounds of cheap shots at the District's "perverted act about perverted acts."

And what was the perversion? The proposal said essentially that the law should not attempt to regulate sexual conduct so long as it is private, noncommercial, consensual, nonincestuous and between adults.

It makes sense to me.

THE WASHINGTON POST, MONDAY, OCTOBER 19, 1981

James J. Kilpatrick

When Hypocrisy Trampled Principle

Late on the afternoon of Oct. 1, an angry and resentful House voted 281-119 to nullify an ordinance that had been adopted in July by the District of Columbia. The vote set off a roaring hullabaloo in the press here, but the story attracted little attention elsewhere.

In common with most of the stories from our town, the House debate involved questions of law and politics. The story also involved hypocrisy, of which we have more than our fair per capita share, and it provided an example of Victor Hugo's truism in reverse. It may be true that no army can stop an idea whose time has come, but neither can an army impose an idea whose time has not come.

As an ordinance governing sexual conduct in the capital of our nation, the time for Ordinance 4-89 plainly had not come. So the House killed it.

Curiously, the long and contentious debate scarcely touched upon the paramount law in this matter. This is the

provision toward the end of Article I, Section 8, of the Constitution, by which Congress is vested with the specific power "to exercise exclusive legislation in all cases whatsoever over such district as may become the seat of government of the United States." It is among the most interesting clauses in the Constitution for this reason: it is the most absolutely unequivocal clause in our basic law. Nowhere else does one find such a phrase as "all cases whatsoever." By the Home Rule Act of 1973, Congress delegated much local authority to the D.C. council, but Congress could not possibly surrender the power and responsibility that constitutionally it holds.

There is thus no question, it seems to me, that Congress had the power to revoke the D.C. ordinance. Was the power wisely exercised?

The ordinance in question was not radically different from the sex codes that have been adopted in recent years by almost half the states. Without at-

tempting a line-by-line analysis, it may suffice to say that the ordinance was intended to decriminalize most sexual conduct between consenting adults.

Had the ordinance stopped there, the hullabaloo might not have developed, but the ordinance went further in reducing maximum penalties for forcible rape and in repealing certain criminal sanctions against sexual activity on the part of persons as young as 16. Moreover, the ordinance could be read—as opponents loudly read it—as approving homosexual sodomy and tolerating public lewdness.

All this was too much for many conservatives, loosely identified with the Moral Majority, on both sides of the aisle. Here was an opportunity to stand up for virtue and to vote against sin. The opportunity was not to be lost. Virtue triumphed, but hypocrisy trampled principle underfoot.

In principle, most of the members profess dedication to democracy and majority rule. In principle, both liberals and conservatives subscribe to the view that the state should not intrude into the sexual lives of adults. These are good principles, but here they could not prevail. Politics rose above them.

The Constitution treats residents of the District of Columbia as its bastard children, whose civil rights gained nothing from their ancestors and offer nothing to posterity. To deny D.C. residents the power to govern themselves in matters of local criminal law is to deny fundamental principle. And when the House collectively rolls its eyes and deplors the repeal of a statute making adultery and fornication criminal offenses, honest men must hold their noses.

For my own part, I think the D.C. ordinance was an unfortunate act on the city council's part. It went further than national mores will now permit. But in surrendering so abjectly to the moral mob, the House fell short of statesmanship. This was not its finest hour.

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APPENDIX

LETTER OF TRANSMITTAL



COUNCIL OF THE DISTRICT OF COLUMBIA

WASHINGTON, D. C. 20004

RECEIVED

JUL 23 1981

JUL 21 1981

House of Representatives
Committee on the District of Columbia

1857

The Honorable Thomas P. O'Neill, Jr.
Speaker of the House
U.S. House of Representatives
Washington, D.C. 20515

Re: D.C. Act 4-69, "District of Columbia Sexual Assault
Reform Act of 1981". and Report.

Date of Council Action July 14, 1981

Dear Mr. Speaker:

The above named act is hereby transmitted in accordance with section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act, P.L. 93-198.

To begin the count of the 30-day review by Congress, please acknowledge receipt of this document on the copy attached.

Sincerely,

ARRINGTON DIXON
Chairman

Enclosure

Receipt Acknowledged _____ Date _____

AN ACT
D.C. ACT 4-69

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JUL 21 1981

To reform the sexual assault laws of the District of Columbia, and for other purposes.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA,

That this act may be cited as the "District of Columbia Sexual Assault Reform Act of 1981".

Sec. 2. Definitions.

As used in this act, the term:

(1) "bodily injury" means injury involving loss or protracted impairment of the function of a bodily member, organ, or mental faculty, or physical disfigurement, or injury involving significant physical pain.

(2) "custodian" means any person who lives in the same household as and has some supervisory and disciplinary control over a person who is less than eighteen (18) years of age.

CODIFICATION
D.C. Code,
title 22,
new chapter 30

D.C. Code,
sec. 22-3001

(3) "guardian" means a legally appointed guardian, a natural guardian, or a guardian in fact.

(4) "inmate or patient" means a person confined to a prison, hospital, juvenile detention center, halfway house, or similar institution.

(5) "parent" means a natural parent, an adoptive parent, or a stepparent.

(6) "relative" means a grandparent, an aunt or an uncle, related by blood either whole or half, or by marriage or adoption, or a brother or a sister, related by blood either whole or half.

(7) "sexual act" means conduct consisting of contact: (a) between the penis and the vulva, anus, or mouth; (b) between the mouth and the vulva or anus; or (c) between an artificial sexual organ or other object or instrument employed in the manner of an artificial sexual organ, and the anus or vulva. For purposes of this definition, contact involving the penis, artificial sexual organ, or object or instrument occurs upon penetration, however slight, and emission of semen is not required.

(8) "sexual contact" means touching a person's intimate parts, or causing a person to touch his or her own intimate parts or those of the offender or of a third person whether directly or through clothing, for the purpose of arousing or gratifying the sexual desires of any person. The term "intimate parts" means the primary genital area, the groin, the inner thigh, the anus, the buttocks, or the breast.

(9) "spouse" means a person with whom the offender is living as husband or wife, whether by common law marriage or ceremonial marriage. The term "spouse" does not include a husband or wife who is separated.

Sec. 3. Sexual Assault in the First Degree.

Whoever compels a person to participate in or submit to a sexual act:

D.C. Code,
sec. 22-3002

- (a) by actual physical force;
- (b) by threatening or placing the victim in reasonable fear that any person will be subjected to death, kidnapping, or bodily injury; or
- (c) by substantially impairing the ability of the victim to appraise or control his or

her conduct by administering or employing a drug, an intoxicant, hypnosis, or other similar means without the knowledge of or against the will of the victim and with the intent to engage in a sexual act; commits an offense and upon conviction shall be imprisoned for a term not exceeding twenty (20) years.

Sec. 4. Sexual Assault in the Second Degree.

Whoever engages in a sexual act with a person who is not the offender's spouse knowing that the other person is:

- (a) incapable of withholding consent to the sexual act because of a physical disability or a mental deficiency; or
- (b) physically incapable of resisting, or of withholding consent to, the sexual act because of intoxication by drugs, alcohol, hypnosis, or similar means;

commits an offense and upon conviction shall be imprisoned for a term not exceeding ten (10) years.

Sec. 5. Unlawful Sexual Act with a Child.

D.C.Code,
sec. 22-3003

D.C.Code,
sec. 22-3004

whoever engages in a sexual act with a child, if the child is less than sixteen (16) years of age and is not the spouse of the offender; commits an offense and upon conviction shall be imprisoned for a period not exceeding twenty (20) years.

Sec. 6. Unlawful Sexual Act with a Ward.

Whoever engages in a sexual act with a person less than eighteen (18) years of age:

D.C.Code,
sec. 22-3005

(a) being a parent, relative, or guardian, and not the victim's spouse; or

(b) being a custodian and not the victim's spouse, and causes the sexual act in question by threatening to exercise her or her custodial authority to affect the victim adversely unless the victim engages in the sexual act; commits an offense and upon conviction shall be imprisoned for a term not exceeding eight (8) years.

Sec. 7. Unlawful Sexual Act with an Inmate or Patient.

D.C.Code,
sec. 22-3006

whoever engages in a sexual act with an inmate or patient or causes a sexual act to be engaged in

between an inmate or patient and a third person,
if:

(a)(1) the inmate or patient is not the
offender's spouse or the third person's spouse;
and

(2) the offender has supervisory or
disciplinary authority over, or care, custody, or
control with respect to the victim, and the
offender causes the sexual act in question by
threatening to withhold services for or treatment
of the victim or to use his or her supervisory or
disciplinary authority to affect the victim
adversely unless the victim engages in the sexual
act; or

(b)(1) the victim is a patient of the
offender and is not the offender's spouse or the
third person's spouse; and

(2) the victim submits to the sexual act
due to representations made by the offender that
the act engaged in constitutes or is related to a
medical examination;

commits an offense and upon conviction shall be
imprisoned for a term not exceeding five (5)
years.

Sec. 8. Sexual Contact in the First Degree.

Whoever compels a person who is not the offender's spouse to participate in or submit to sexual contact:

D.C.Code,
sec. 22-3007

- (a) by actual physical force;
- (b) by threatening or placing the victim in reasonable fear that any person will be subjected to death, kidnapping, or bodily injury; or
- (c) by substantially impairing the ability of the victim to appraise or control his or her conduct by administering or employing drugs, alcohol, hypnosis, or other similar means, without the knowledge or against the will of the victim and with the intent to engage in sexual contact;

commits an offense and upon conviction shall be imprisoned for a term not exceeding five (5) years in the case of a violation of subsection (a) and shall be imprisoned for a term not exceeding eight (8) years in the case of a violation of subsection (b).

Sec. 9. Sexual Contact in the Second Degree.

D.C.Code,
sec. 22-3008

whoever engages in a sexual contact with a person who is not the offender's spouse:

- (a) without the consent of the victim;
 - (b) knowing that the victim is physically incapable of resisting or withholding consent to the sexual contact, because of intoxication due to drugs, alcohol, hypnosis or similar means;
 - (c) knowing that the victim is incapable of withholding consent to the sexual contact because of a physical disability or a mental deficiency;
 - (d) under circumstances that would constitute an offense under section 6 if such contact involved a sexual act; or
 - (e) the victim being less than eighteen (18) years of age and the offender being:
 - (1) a parent, relative, or guardian; or
 - (2) a custodian who causes the sexual contact through the exercise of his or her custodial authority;
- commits an offense and upon conviction shall be imprisoned for a term not exceeding one (1) year, or fined not more than one thousand dollars

(\$1,000) or both in the case of a violation of subsection (a), (b), (c), and (d); and shall be imprisoned for a term not exceeding three (3) years or fined not more than three thousand dollars (\$3000) or both in the case of a violation of subsection (e).

Sec. 10. Additional Penalty.

If a person having been found guilty of sections 7 or 8(a) through (d) is the parent, grandparent, aunt, or uncle related by blood either whole or half, by marriage or adoption of the victim, the penalty may be up to one and one-half (1 1/2) times that prescribed for the particular offense.

D.C. Code,
sec. 22-3009

Sec. 11. Prosecution of Persons less than Eighteen (18) Years of Age.

D.C. Code, sec. 16-2301 ~~et seq.~~ shall remain in effect, except as provided by section 12(f).

D.C. Code,
sec. 22-3010

Sec. 12. Amendatory Provisions.

(a) An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1321) is amended as follows:

(1) Section 798 (D.C. Code, sec. 22-2401) is amended by striking the word "rape" and inserting

D.C. Code,
sec. 22-2401

the phrase "sexual assault in the first degree" in lieu thereof.

(2) Section 803 (D.C. Code, sec. 22-501) is amended by striking the word "rape" and inserting the phrase "sexual assault in the first degree, sexual assault in the second degree, and unlawful sexual act with a child" in lieu thereof.

D.C. Code,
sec. 22-501

(b) Section 1 of An Act To control the possession, sale, transfer, and use of pistols and other dangerous weapons in the District of Columbia, to provide penalties, to prescribe rules of evidence, and for other purposes, approved July 8, 1932 (47 Stat. 650; D.C. Code, sec. 22-3201) is amended by striking the word "rape" wherever it appears and inserting the phrase "sexual assault in the first degree or second degree" in lieu thereof.

D.C. Code,
sec. 22-3201

(c) An Act To provide for the treatment of sexual psychopaths in the District of Columbia, and for other purposes, approved June 9, 1948 (62 Stat. 348; D.C. Code, sec. 22-3501 et seq.) is amended as follows:

(1) Section 202(e) (D.C. Code, sec. 22-3504(e)) is amended by striking the phrase "rape

D.C. Code,
sec. 22-3504

or assault with intent to rape" and inserting the phrase "sexual assault in the first degree or second degree or assault with intent to commit sexual assault in the first degree or second degree" in lieu thereof; and

(2) Section 103(d) (D.C. Code, sec. 22-3501(d)) is amended by striking the phrase "or by section 808 of the Act of March 3, 1901, entitled 'An Act To establish a code of law for the District of Columbia', as amended and supplemented (D.C. Code, 1940 edition, sec. 22-2801)" and inserting the phrase "sexual assault in the first degree" in lieu thereof.

D.C. Code,
sec. 22-3501

(d) Section 1 of An Act for the suppression of prostitution in the District of Columbia, approved August 15, 1935 (49 Stat. 651; D.C. Code, sec. 22-2701) is amended as follows: (1) by striking the phrase "or any other immoral or lewd purpose"; and (2) by inserting following the phrase "District of Columbia, for the purpose of" the phrase "heterosexual or homosexual".

D.C. Code,
sec. 22-2701

(e) Section 9(a) and (b) of An Act for the preservation of the public peace and the protection of property within the District of

Columbia, approved July 29, 1892 (27 Stat. 324; D.C. Code, sec. 22-1112) is amended to read as follows: "Sec. 9.(a) Any person or persons who makes any obscene or indecent exposure of his or her person, or commits any other lewd, obscene, or indecent act, or makes a lewd, obscene, or indecent proposal with reckless disregard that someone perceiving the proposal will be seriously offended, commits an offense and upon conviction shall be fined not more than three hundred dollars (\$300), or imprisoned for a term not exceeding ninety (90) days, or both, for each and every such offense.

D.C. Code,
sec. 22-1112

"(b) Any person or persons who makes any lewd, indecent, or obscene exposure of his or her person, or commits any other lewd, indecent, or obscene act or makes any sexual proposal knowing or having reasonable cause to believe that he or she or they are in the presence of a child less than sixteen (16) years of age, commits an offense and upon conviction shall be fined not more than one thousand dollars (\$1000), or imprisoned for a term not exceeding one (1) year, or both, for each and every such offense."

(f)(1) D.C. Code, sec. 16-2301 is amended by striking the phrase "forcible rape," and inserting the phrase "sexual assault in the first degree," in lieu thereof.

D.C. Code,
sec. 16-2301

(2) D.C. Code sec. 23-1331 is amended (1) by striking the phrase "forcible rape," and inserting the phrase "sexual assault in the first degree," in lieu thereof; and (2) by striking the phrase "carnal knowledge of a female under the age of sixteen (16) years," and inserting the phrase, "unlawful sexual act with a child" in lieu thereof.

D.C. Code,
sec. 23-1331

Sec. 13. Repealer Provisions.

(a) Sections 808, 818, 871, 873, and 874 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1332; D.C. Code, secs. 22-2801, -2304, -3002, -3001, & -301 are repealed.

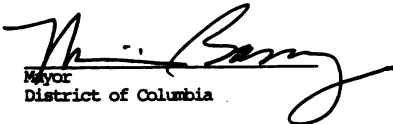
D.C. Code,
secs. 22-301, 22-10,
22-2304, 22-2801,
22-3001, 28-3002,
& 22-3502
repealed

(b) Section 104 of An Act To provide for the treatment of sexual psychopaths in the District of Columbia, and for other purposes, approved June 9, 1948 (62 Stat. 347; D.C. Code, sec. 22-3502) is repealed.

(c) Section 214 of the District of Columbia Law Enforcement Act of 1953, approved June 29, 1953 (67 Stat. 99; D.C. Code, Sec. 22-1002) is repealed.

Sec. 14. Effective Date. This act shall take effect after a period of Congressional review following approval by the Mayor (or in the event of veto by the Mayor, action by the Council of the District of Columbia to override the veto) as provided in section 602(c)(2) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 813; D.C. Code, sec. 1-147(c)(2)).


Chairman
Council of the District of Columbia


Mayor
District of Columbia
APPROVED: July 21, 1981



COUNCIL OF THE DISTRICT OF COLUMBIA
Council Period-Four
First Session

DOCKET NO: B 4-122

☐ Item on Consent Calendar

ACTION: Adopted First Reading, 6-30-81

☒ VOICE VOTE: Majority

Absent: Ray and Moore

☐ ROLL CALL VOTE:

COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.
CHMN. DIXON					KANE					SHACKLETON				
WINTER					MASON					SPAULDING				
CLARKE					MOORE, JR.					WILSON				
CRAWFORD					RAY									
JARVIS					ROLARK									

X - Indicates Vote A.B. - Absent N.V. - Not Voting

CERTIFICATION OF RECORD

John D. Brang
Secretary to the Council

7-14-81

Date

☒ Item on Consent Calendar

ACTION: Adopted Final Reading, 7-14-81

☒ VOICE VOTE: Unanimous

Absent: Ray

☐ ROLL CALL VOTE:

COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.
CHMN. DIXON					KANE					SHACKLETON				
WINTER					MASON					SPAULDING				
CLARKE					MOORE, JR.					WILSON				
CRAWFORD					RAY									
JARVIS					ROLARK									

X - Indicates Vote A.B. - Absent N.V. - Not Voting

CERTIFICATION OF RECORD

John D. Brang
Secretary to the Council

7-14-81

Date

☐ Item on Consent Calendar

ACTION: _____

☐ VOICE VOTE: _____

Absent: _____

☐ ROLL CALL VOTE:

COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.
CHMN. DIXON					KANE					SHACKLETON				
WINTER					MASON					SPAULDING				
CLARKE					MOORE, JR.					WILSON				
CRAWFORD					RAY									
JARVIS					ROLARK									

X - Indicates Vote A.B. - Absent N.V. - Not Voting

CERTIFICATION OF RECORD

Secretary to the Council

Date

81-P-6755

Council of the District of Columbia

Report RECEIVED

The District Building, 1400 E Streets, N.W. 20004 First Floor 724-8000
 JUN 10 1981

To OFFICERS OF THE COUNCIL OF THE DISTRICT OF COLUMBIA
 DIST. OF COLUMBIA
 From David A. Clarke, Chairman of the Committee on the Judiciary
 Date June 3, 1981
 Subject Bill 4-122, the "District of Columbia Sexual Assault Reform Act of 1981"

The Committee on the Judiciary, to which the above-described bill was referred, reports favorably on the bill, and recommends its enactment by the Council.

PURPOSE OF THIS LEGISLATION

The general purpose of Bill 4-122, the "District of Columbia Sexual Assault Reform Act of 1981", is to modernize and consolidate the District of Columbia's law regarding sexual assault. Currently, the laws which regulate sexual activity or conduct are scattered throughout seven chapters of Title 22 1/. The proposed bill would consolidate the law on sexual assault, while repealing other law prescribing sexual behavior, which have fallen into disuse.

The laws of the District of Columbia regulating and prescribing sexual conduct are in need of comprehensive reform to make the laws more inclusive and flexible, focusing on the issues of force and fraud, rather than upon the issue of consent. Significant changes have been made to some of the sexual assault laws 2/, but the reforms have been made in a piecemeal fashion, without consideration to the overall scheme of laws or penalties prescribing sexual activity. The "District of Columbia Sexual Assault Reform Act of 1981" takes a comprehensive approach to the entire range of sexual conduct laws, and would affect some much needed philosophical and sentencing reforms.

The bill concentrates on sexual assaults and contacts achieved by force or fraud and defines the prohibited activity with specificity, in terms of the acts themselves, and the minimum amount of coercion, deception or force that falls within the statutory ambit.

- 1/ The following laws regulate sexual conduct in the District of Columbia: Adultery, D.C. Code, Sec. 22-301; Fornication, D.C. Code, Sec. 22-1001; Incest, D.C. Code, Sec. 22-1901; Prostitution, D.C. Code, Sec. 22-2701; Rape, D.C. Code, Sec. 22-2801; Seduction, D.C. Code, Sec. 22-3001, Sodomy and Indecent Liberties with Children, D.C. Code, Sec. 22-3501 et seq.
- 2/ D.C. Code, Sec. 22-2801 has been amended three times since its 1901 passage. In 1920, the provision for a minimum five-year term was eliminated. In 1925, the manner of execution for the crime of rape was changed from hanging to electrocution. In 1970, the law was amended to eliminate the death penalty and amended to establish a life sentence as the penalty.

The legislation would broaden the traditional concept of rape by expanding the forms of compulsion. In addition, the bill would eliminate all references to gender thereby consolidating sexually prohibited conduct into one set of laws which could penalize any sexual attack upon any person regardless of the sex of either person. Further, this bill is designed to expand the protection against sexual abuse of heretofore unprotected classes of people, basing the protection not on the issue of actual force, but on the question of coercion imposed because of superior position or status. In addition the prohibitions against sexual conduct with children are made more flexible by focusing upon and by grading the crime according to the age of the victim and the perpetrator.

Finally, this bill would repeal all prohibitions on non-commercial sexual conduct between consenting adults. Voluntary, adult, sexual associations whether between members of the same or opposite sex, or between persons who are not married to each other, will no longer be criminal.

LEGISLATIVE CAPSULES

Bill 4-122 was introduced by Councilmember David A. Clarke on February 10, 1981, and was co-sponsored by Councilmembers Rolark, Shackleton and Mason. Notice of the proposed legislation and Notice of Public Hearings appeared on February 20 in the District of Columbia Registrar. Public Hearings were held on March 12th and 13th.

The following people testified or supplied written testimony on the "Sexual Assault Reform Act of 1981" at the Public Hearings:

1. Mr. Charles F. C. Ruff, the United States Attorney for the District of Columbia.
2. Mrs. Judith Rogers, the Corporation Counsel.
3. Ms. Edna Fraiser-Cromwell.
4. Mr. Donald Sullivan.
5. Representatives from the American Civil Liberties Union.
6. Mr. Thomas Chorlton of the Gertrude Stein Club.
7. Mr. George Fraine of the Eighteenth and Columbia Road Business Association.
8. Mr. Dino Drudi, a concerned citizen.
9. Mr. Jerome Page of the Washington Urban League.
10. Reverend Edward Hailes of the NAACP.
11. Ms. Ethel James Williams, Executive Director, D.C. Commission for Women.
12. Ms. Winona Eades of the D.C. Rape Crisis Center.
13. Ms. Loretta Ross, D.C. Commission on Women.

14. Ms. June Zeitlin, D.C. Commission on Women.
15. Ms. Audra B. Rafter, D.C. State Business and Professional Women's Club.
16. Mr. Gabriel Sucher, Greater Washington American for Democratic Action.
17. Father Bazan, Sacred Heart Church.
18. David Lloyd, Children's Hospital Child Protection Center.
19. Dr. Frank Kamery, concerned citizen.
20. Mr. Harold Thomas, North Portal Civic League.

The bill was marked up in the Committee on the Judiciary on June 3, 1981.

NEED

The current range of laws proscribing sexual conduct and activities in the District of Columbia is inadequate in its protection against sexually abusive behavior, because the laws are inflexible, poorly defined, vague and drafted in terms of gender. The laws are inadequate to protect against assaultive behavior, and yet are over-broad in their regulation of consensual activities between adults. Currently, the array of sexually-related legislation prohibits many types of non-commercial, private and entirely consensual activity, as well as prohibiting commercial, non-consensual and juvenile sexual behavior. Non-consensual sexual activities are regulated by the: Rape-Carnal Knowledge statute, Section 22-2801; Assault with Intent to Commit Rape, Section 22-501; Simple Assault, Section 22-504; and "unconsensual" Sodomy, Section 22-3502. Consensual sexual activities are at present regulated by several other more statutes: Adultery, Section 22-301; Fornication, Section 22-1002; Incest, Section 22-1091; Seduction, Section 22-3001; Seduction by a Teacher, Section 22-3002; Indecent acts with Children, Section 22-3501; and "consensual" Sodomy, Section 22-3502. These latter sections are designed: (1) to prohibit sexual conduct with minors, especially females, (2) to prevent any form of sexuality viewed as deviant, such as homosexual activity; and (3) to prevent sexual activities between adults because of familial or marital status. The repressive and intrusive character of these laws which prohibit consensual adult behavior has been recognized in recent years as an unwarranted invasion into the private lives of individuals, which should not be addressed in the criminal law.

With respect to non-consensual sexual conduct, the law of rape is notably inflexible. The current rape law which carries a sentence of up to life imprisonment covers two types of criminal behavior. First, it includes carnal knowledge, or sexual penetration by a male upon a female under the age of sixteen; and second it includes the crime of rape, or penetration of a woman's sexual organ achieved by force and against her will ^{3/}. This law is inadequate in many ways. It is not entirely clear what amount or kind of force is necessary, or what resistance is required on the part of the female. It is a crime that can be committed only by a man and only upon a female, and would not cover the forcible use of an object to achieve penetration ^{4/}.

^{3/} See Criminal Jury Instructions, No. 4.74.

^{4/} See U.S. v. Wiley, 492 F. 2d 547 (1973).

The meaning of the second element of rape embodied in the words "by force and against her will" has been debated in the courts for years. The language has been interpreted to mean that a reasonable belief by the victim that she faced death or serious bodily injury was sufficient to satisfy the element. Utmost resistance is not required. 5/ While not requiring resistance in the face of dangerous threats, the focus of the law is in large part upon the conduct of the female and the question of whether or not there was consent. The current law fails to make clear that the use of force is a strong indication that consent did not exist.

Although not a part of the explicit statutory requirements, a husband cannot be charged with rape of his wife by operation of a common law tradition known as spousal immunity. 6/ Even if a husband and wife were separated, a woman who is sexually abused — raped — by her husband cannot have him charged with rape. This is yet another inflexible part of the current rape law.

The statutory rape or carnal knowledge law, which is in the same provision as the forcible rape law, prohibits any male from having sexual intercourse with a female under the age of sixteen. No force is necessary before the act becomes a crime. Neither consent, nor mistake as to the age of the complainant, even when entirely reasonable, can be raised as a defense against a claim of statutory rape. This provision has also been discussed by the courts as an appropriate method to prosecute cases involving mentally retarded females, using the legal fiction of the mental or emotional age rather than the chronological age. 7/ No cases, however, have actually used the theory successfully.

It is evident that the statutory rape law was designed to do more than protect young girls from sexual exploitation, since consent is not a defense, even if the male is younger than the female. The laws were designed to prevent any consenting sexual relations with females below sixteen in order to protect their virginity and uphold a societal view of correct juvenile morality. Force is conclusively presumed in carnal knowledge cases. 8/ Moreover, the Court of Appeals of the District of Columbia justified the statute by stating: "the principal purpose of the statute — the protection of underage females, in contradistinction to male children from illicit sexual intercourse — is a reasonable classification in view of the fact that only members of the female sex would be susceptible to pregnancy as a result of such conduct." 9/ The Court thereby rejected an equal protection argument. Further, the Court reasoned that the statute was not limited to male offenders. "Although physically incapable of committing the prohibited act, a female nevertheless may be charged as a principal under the statute if she aided or abetted the commission of the particular crime. D.C. Code 1973, Section 22-105." 10/

5/ See Arnold v. U.S., 358 A2d 335 (D.C. App. 1976) (en banc.).

6/ Michigan was the first state to abrogate the spousal immunity doctrine in 1975, when their sexual assault laws were revised.

7/ U.S. v. Madley, 452 F 2d 1325 (1971). The case involved a 27-year old woman, whose mental age was below 16. The case was reversed for insufficient evidence.

8/ Wheeler v. U.S., 211 F2d 19 (1953), cert. denied 347 U.S. 1019 (1954).

9/ In re W.E.P., 318 A2d 286, 290 (1974).

This law is inadequate because, while prosecutable for the offense, a male child is not protected in the same fashion as a female child.

Assault with intent to commit rape, Section 22-501 11/, has two elements: (1) an assault and (2) the intent to commit rape. Essentially, it is an attempt to commit the more serious act. This crime requires a specific intent to perpetrate the act of physical penetration, unlike rape which requires only a general intent. The mere fact that force is used is insufficient to prove the charge. The force must be of the type required for rape along with the specific intent. However, if the intended victim is below sixteen years of age, the intent to have intercourse "with force and against the will" of the female is dispensed with. 12/ The statute by using the rape law as its basis is flawed in the same ways as the rape law.

The conduct prohibited by Section 22-501 is similar to conduct covered by Section 22-3501, taking indecent liberties, with the major difference being that it applies to males, as well as females, under the age of sixteen. Penetration is not required, but instead any physical contact with a person under sixteen years of age is strictly forbidden if the purpose of the contact is to arouse or gratify the sexual desires of either person. As with the carnal knowledge statute, mistake as to age is no defense. Further, even if both parties are under sixteen and are engaged in consensual behavior, both could be prosecuted under this provision. The current law does not allow for physical contact even by children close in age. Under this section, it is also a crime to entice or lure a child under sixteen to any place for the purpose of taking immoral, improper or indecent liberties with the child 13/.

Sodomy as defined in the D.C. Code, Section 22-3502 prohibits all acts of sodomy, whether forcible or voluntary, between humans regardless of their sex or marital status. The section is thus overbroad in its application, since it makes no distinction between violent and non-violent conduct. Under the laws of the District of Columbia, even if the conviction is for consensual sodomy it is a crime of moral turpitude, and a conviction has been held sufficient cause for the Immigration Service to deport a person 14/. Conviction of this felony can carry up to ten years if it involves an adult, and up to twenty years if the "victim" is a child under sixteen years of age. The penalty is clearly excessive for consensual acts, and yet less severe than the rape statute which carries a sentence of up to life. There seems to be little justification for the vast difference in penalty for unconsensual sodomy and rape which may be equally violent and demeaning. This is another area of disparity that this bill has addressed.

11/ D.C. Code, Section 22-501 would not be repealed by Bill 4-122, but the language would be modified to include sexual assault in the first and second degree.

12/ See *Allison v. U.S.*, 409 F.2d 445 (1969).

13/ D.C. Code, Section 22-3501(b) would not be repealed by Bill 4-122.

14/ *Velez-Lozano v. Immigration and Naturalization Service*, 463 F.2d 1305 (1972).

The crimes of adultery, fornication and consensual adult incest have fallen into disuse as outdated attempts to control sexual conduct based on marital or familial relations. Adultery and fornication in particular are viewed as archaic attempts to stop sexual conduct outside the bonds of marriage. Incest, on the other hand, is a crime of serious proportion and consequence and is a proper area of state control when it involves children ^{15/}. It has, however, become outdated as a device to control consensual adult behavior and is insufficient to prevent sexual conduct between children and adults who are not related to them, but who live in the same household. The law is deficient in its protection, and lags behind cultural changes in the family structure. Today, the family structure is less rigid than in 1901 when the incest law was passed. Today, it would not be unheard of for a minor child to be sexual victimized by a parent's live-in friend, and the law as it is currently structured cannot offer full protection to children between the ages of sixteen and eighteen, since children in that category fall outside the definition of statutory rape, and usually this crime does not involve physical force, but ambiguous coercive pressure.

The crimes of seduction, Section 22-3001 and seduction by a teacher, Section 22-3002, were enacted in 1901 to protect the virginity of girls between the ages of sixteen and twenty-one. Even a subsequent marriage between the parties did not bar prosecution. The Court of Appeals ruled in 1914 that the "object of the statute is to protect the chaste virgin against betrayal from an honest belief in the betrayer's protestations of love and affection, or an existing promise of marriage...as an inducement for the commission of the act". ^{16/} Clearly, the statute is directed at maintaining a female's virginity before marriage, rather than at the coercive nature of any particular relationship. This provision is written in terms of gender and is an outdated attempt to protect a female's virtue.

In summary, the present law is especially narrow and inflexible in its protection of people against forceful or coercive sexual conduct, and especially broad in its coverage of consensual sexual conduct. Most of the statutes are written in terms of gender, treating males differently than females, and usually providing less coverage for them. Finally, the law is inadequate in its protection against sexual conduct brought about by the abuse of superior position. The proposed law would address these problems of inflexibility and gender specification, as well as expanding the sexual assault laws to include conduct not presently covered by the criminal law.

^{15/} Child Sexual Abuse: Legal Issues and Approaches, (A monograph by the National Legal Resource Center for Child Advocacy and Protection, American Bar Association, Young Lawyers Division, Wash., D.C. Sept. 1980).

^{16/} Bray v. U.S., 39 App. D.C. 600 (1913).

IMPACT ON EXISTING LAW

It has become widely accepted in recent years that the social harm associated with non-commercial, private sexual activity between consenting adults does not engender public outrage sufficiently to warrant penal sanctions. The proposed legislation would therefore repeal fornication, adultery, and incest for consenting adults. Fornication, adultery and consensual adult incest are essentially moral laws that have been incorporated into the penal law. While the fornication and adultery laws make criminal the acts of probably a majority of the population of the District of Columbia at one time or another, the statutes are rarely used. Furthermore, the Sexual Assault Reform Act is based on the proposition that a secular penal code should not be used to enforce purely moral or religious standards.

It has also been accepted that private consensual acts of sodomy should not be subject to criminal sanctions. This bill adopts the position that sexual practices not involving force, corruption of minors, commercial sexual acts or offenses committed in public, involve no secular harm to the community, and are outside the boundaries of the criminal law.

This bill would eliminate the specification of gender from all of the offenses. It is the intention of this measure that gender should not be the basis of protection of the criminal law, but that all individuals regardless of sex should be treated equally. The sexual neutrality of the bill is most evident in the definition of sexual act which encompasses not only sexual intercourse, and sodomy, but also the use of an instrument to cause penetration.

The crime of sexual assault is roughly equivalent to the crimes of forcible rape and forcible sodomy. Chief among the differences between the proposed bill and the rape statute, is the absence of and the elimination of spousal immunity for first degree sexual assault. If force is used to compel the sexual act first degree sexual assault has occurred and even a spouse may be prosecuted. The element embodied in the phrase "against the will" of the female would be eliminated. It is recognized that requiring resistance to show that the sexual act was accomplished by force is both unwise and dangerous. The use of threats to compel the sexual act will not be changed by the proposal. The requirements of threats creating reasonable fear that significant pain, death or protracted loss of bodily or mental function is intended to embody current case law. The provision would, however, expand the current law by covering threats to persons other than the

victim. It is the view of the drafters that threats to a person's family or friends can be an equally effective weapon in compelling a sexual act, and that the law should clearly prohibit such conduct. The third method that will elevate the sexual act to a first degree sexual assault is the use of drugs, intoxicants or hypnosis, covertly administered by the offender with the specific intent being to engage in the sexual act. This is an entirely new provision filling a gap in current rape law. Since the use of force could not be established under such circumstances, and because there would be no proof that the act was "against the will" of the female, the crime of rape would not have occurred under current law. It is unlikely that this form of sexual assault occurs often, but the drafters view such behavior as serious enough to warrant treatment as first degree sexual assault.

Under the proposal a spouse could be prosecuted for sexual assault in the first degree, however, the common law doctrine of spousal immunity would be incorporated in this bill to prevent the criminal liability of a spouse for other sexual acts or conduct that would otherwise be a crime under this bill. In addition, the doctrine of spousal immunity would be altered through the definition of spouse. A spouse means a man and woman who are living together as husband and wife, whether the marriage is ceremonial or by common law. The definition of spouse would not include a husband or wife who are separated. There is no requirement that a written separation or legal separation exist. A couple who no longer are living together as a husband and wife would not qualify under the definition as spouses, and thus the operation of the doctrine is strictly limited. It was the observation of the drafters of the legislation that in the District of Columbia it is not an uncommon occurrence for spouses to separate without any intention at reconciliation, and without obtaining any type of legal separation. This is especially true of common law spouses. It does not for instance seem logical that a couple who are common law spouses would get a legal separation. The decision was therefore made to exclude from the definition of spouses those who are separated. In order to determine if a separation has occurred, however, primary consideration should be given to the standards found in Section 16-904 of the D.C. Code.

The current rape statute is useless in the prosecution of a sexual act committed upon an unconscious or near unconscious person, since the element of force cannot be proven. The element of force embodied in the phrase "against her will" does not have meaning for an unconscious person. No where in the law is the obstacle to prosecution of heinous behavior more evident than in the sexual abuse of a person who is unconscious, or utterly unable to resist physically, or to withhold consent. This obstacle is overcome by the sexual assault in the second degree which would penalize such conduct. It is the intent of this provision to protect persons who are so intoxicated as to be unable to say no. It is not the intent to permit prosecution of persons engaging in sexual acts with others who consent, because of their intoxication where they might not have consented otherwise. In addition, a sexual act that is consummated upon a person who prior to the intoxication gave consent would not be subject to the provision, since the prior consent would be sufficient to establish the defense of consent.

This principle of protection for those who are unable to consent is carried further by the prohibition contained in sexual assault in the second degree against engaging in sexual acts with people who are so mentally deficient that they do not know that the sexual act is occurring.

The shield of the law is no where more clearly appropriate than to protect children from sexual abuse. The intent of this bill is to provide a vast range of crimes at times overlapping to build this shield. The laws are meant to be flexibly used as an effective prosecutorial tool to counter sexual abuse of children. One of the major reforms accomplished by the bill is the establishment of two degrees of unlawful sexual acts based on the ages of the child and the perpetrator. The bill recognizes that sexual experimentation takes places between peers. The younger the child the smaller the age differential that is legislatively permissible for such experimentation. These provisions were not designed as a puritanical ethic, but as a protection for children from coercive sexual acts. For a child under twelve, no defense of consent could be invoked if the perpetrator is more than two years older than the child. The perpetrator would be subject to adult or juvenile court. For a child between the ages of twelve and fifteen the law would permit sexual acts with people not more than four years older. The section would also include an affirmative defense to the charge of unlawful sexual acts with an older child, if there has been a reasonable mistake as to the age of the child. The provision uses the language "critical age," which is meant to be a relative term that depends upon the age of the perpetrator in relation to the child. The question for the trier of fact would be "did the defendant reasonably believe that the child was less than four years younger than he or she at the time of the offense, or at least sixteen." If there is some attempt to get acquainted before the sexual act takes place, it is unlikely that the age of the child would not be known. Further, the defense is available only for the older child category. It is not likely that the defense will develop as a major obstacle to prosecution for this crime. If there is any evidence of force, drugging, threats or custodial, or familial relationship, the conduct could be prosecuted by other statutes. Furthermore, it is not the intent of this provision to modify Title 16, Chapter 23, relating to the treatment of juveniles as adults for the purpose of prosecution of crimes. Therefore a person under eighteen would still be subject to juvenile court for these acts.

In addition to the provisions based on the age of the victim, the bill would provide protection to persons below eighteen who are coerced by a person because of a superior status or familial relationship to the minor. The unlawful sexual acts with a ward would prohibit parents, relatives, guardians, or custodians from engaging in sexual acts with a minor. As an expansion on the theme of coercion, a custodian who threatens to use supervisory or disciplinary control in an adverse fashion to compel sexual acts would be prosecutable for the conduct if he or she lives in the same household as the minor. The greatest danger of sexual abuse by a custodian exists when he or she lives in the same household with a minor. The prosecution for engaging in a sexual act with a child below sixteen is not limited to this section, however. A custodian who is outside the permissible age range could also be prosecuted under unlawful sexual acts with children.

In this same philosophical vein, the proposal also includes a provision designed to penalize sexual abuse of people who are institutionalized and subject to the abuse, because of the superior position that is held within the institution by a supervisor. This is also an additional alternative prosecutorial tool for sexual abuse of minors who might be in institutionalized care in a hospital, juvenile detention center or foster home, as well as a device to protect adults who might find themselves sexually abused while institutionalized. The crime is designed to prevent the barter of services for sex, but is not a prohibition on all sexual activity between people who are in an institution and those who hold the keys to that institution.

Paralleling the above-mentioned sexual acts that are prohibited are two crimes of sexual contact which do not cover penetration. Sexual contact is specially defined by the nature of the conduct, and the parts of the body. The specification in the language will make prosecution of the act relatively simple since there is no question as to what contact is included. The section is not, however, designed to penalize a simple touching. The force contemplated must be of a sufficient degree to compel a person to submit to the contact or participate in the sexual contact. The contact would include compelling a person to touch their own intimate parts, the intimate parts of the offender or of a third person.

Section-by-Section Analysis

Section 1 indicates that the short title of his act is the "District of Columbia Sexual Assault Reform Act of 1981".

Section 2 lists the definitions to be used in this act.

(a) The term "bodily injury" is defined to include significant physical pain (emphasis added). This term is not meant to cover inconsequential discomfort, but means something less than extreme pain.

(b) The term "guardian" is defined to include anyone that a court might appoint as a guardian, as well as a parent, or a person who acts in the capacity of a guardian.

(c) The term "spouse" includes people how are are living together as if married, but does not include a husband or wife who are separate.

Section 3 defines sexual assault in the first degree, the most serious of the sexual-assault offenses. It is a crime punishable by imprisonment of up to twenty years. As in all of the offenses in this act, sexual assault in the first degree is not defined in terms of the sex or either the offender or the victim, but in terms of the method of compulsion.

It is an act whereby a person compels another person, whether of the opposite sex or the same sex to participate in a sex act. The sexual act by definition includes not only sodomitic sexual contact and sexual intercourse, but also insertion contact involving an artificial sexual organ, object, or instrument into the anus or vulva. This covers a broader range of sexual conduct than sodomy or rape.

The provision is designed to focus on the coercion used by a person, rather than the victim's unwillingness to participate. No demonstration of unwillingness to participate is required. The use of force implies non-consent. Likewise the use of threats that would cause a reasonable person to fear that any person would die, be kidnapped or suffer significant physical pain, loss or protracted impairment of mind or body, or any physical disfigurement would be sufficient if used to compel a sexual act to elevate the conduct to first degree sexual assault.

The third form of compulsion that would be sufficient to elevate a sexual act to first degree sexual assault is the administration of a drug or use of hypnosis without the victim's knowledge or against the victim's will and with the intent to cause a sexual act. The impairment must be substantial, and must affect the ability of the victim to know what he or she is doing, or to control his or her behavior.

Unlike the other provisions contained in this act, a spouse could be charged with this offense. This is intended to eliminate spousal immunity from the first degree sexual assault provision.

Section 4 sets out the offense of sexual assault in the second degree, a crime punishable by ten years of imprisonment. It is an offense that can occur in two ways. First, if a person engages in a sexual act with one who is so mentally deficient that the other person does not know that the sexual act is occurring, a case for second degree sexual assault could be established. This section is designed to protect the severely mentally deficient from sexual abuse, while avoiding intrusion into the lives of the mentally retarded.

The alternative form of second degree sexual assault occurs when a person engages in a sexual act with another person who is either physically incapable of resisting or who is incapable of withholding consent due to intoxication. The crime is not committed if the act was consented to before the intoxication for the prior consent is sufficient to vitiate any later uncommunicated retraction.

Section 5 sets out the crime of unlawful sexual acts with a younger child. The penalty is up to twenty years paralleling the first degree sexual assault penalty. This section aims to protect the very young child from sexual abuse, while allowing for some sexual experimentation between persons very close in age. The age of the perpetrator could not be more than two years older before a sexual act with a child below twelve would trigger the provisions of this act. The act is not intended to alter the juvenile law or treatment of juvenile offenders under Title 16, Chapter 23, Subchapter I. (See Section 12)

Section 6 defines, and sets out the penalty, for unlawful sexual acts with an older child. An older child is defined as being between twelve and fifteen years of age. A person who engages in a sexual act with a child between the ages of twelve and fifteen who is at least four years older is subject to the ten year penalty, if found guilty. The section provides an affirmative defense for one who reasonably believed that the victim had attained the critical age, or was in fact sixteen. Critical age is a relative term and is based on the age of the child in relationship to the perpetrator. If the perpetrator reasonably believe that there was less than four years difference in age between the two parties then the defense would apply. This section is not meant to change Title 23, Chapter 16 on the prosecution of juveniles as adults. (See Section 12)

Section 7 defines unlawful sexual act with a ward and carries a five-year penalty. This provision would penalize a person who has a position of responsibility for, or a familial or guardianship relationship to a child who uses that position as leverage to have sex with a minor under the age of eighteen. The gravamen of the act is the coercive use of relationship to which a child below the age of eighteen would be vulnerable. A parent, relative or guardian who engages in sexual acts with a minor would be subject to the penalty without considering whether or not there had been consent. The second portion of the section covers people who live in the same household as the minor and through the abuse of their custodial authority cause the sexual act to occur. Custodial authority means supervisory and disciplinary control, and for the crime to occur the perpetrator must threaten to use the custodial authority in an adverse fashion against the victim.

Section 8 sets out the definition and punishment for Unlawful Sexual Acts with an inmate or patient and would establish a penalty of up to five years for the offense. A new concept in the law, this provision would make it a criminal act to engage in a sexual act with a patient or inmate or cause a patient or inmate to participate in a sexual act with a third person, if the perpetrator has supervisory or disciplinary control, and coerces a sexual act by threatening to withhold services or threatens to cause adverse disciplinary action against the victim.

A health care provider who engages in sexual acts with a patient by claiming that the sexual act constitutes or is related to a physical examination would also be liable under this provision. The bona fide treatment of a patient for sexual therapy would not be prohibited by this provision.

Section 9 sets out Sexual Contact in the First Degree and establishes the penalty at three years. Sexual contact is defined as compelling a person to participate in or submit to a sexual contact, which is specifically defined according to the bodily parts that are touched. The methods that elevate the touching to first degree parallel first degree sexual assault and unlawful sexual acts with younger and older children.

Section 10 sets out Sexual Contact in the Second Degree and establishes the penalty at one year or \$1,000 or both for this offense. The element of compulsion is eliminated, and any sexual contact, or touching to the parts of the body specified in the definition in Section 2 would establish the crime if the contact occurs under circumstances that would have been second degree sexual assault, unlawful sexual act with a ward, or unlawful sexual acts with a patient or inmate if the sexual act had occurred.

Section 11 provides that the court may give an added penalty of up to one and one half times the maximum penalty if the perpetrator is a parent, grandparent, aunt or uncle of the victim. The specific offenses to which Section 11 applies are unlawful sexual acts with an older child, unlawful sexual acts with a ward, and sexual contact in the first and second degree.

Section 12 provides that no child under age 18 may be prosecuted as an adult for any crime included in this act, except for sexual assault in the first degrees. D.C. Code, Section 16-2301, provides that the U.S. Attorney may charge a person who is 16 years of age or older as an adult for "forcible rape" among other crimes. Section 13(f) of the Act substitutes the term "sexual assault in the first degree" for "forcible rape" in D.C. Code, Sec. 16-2301, so that the language of the Code would conform to the Act, and would continue to allow for the prosecution of a 16-year old in the Superior Court as an adult for the newly-named crime of sexual assault in the first degree.

Section 13 is the repealer section.

The following sections would be repealed: forcible rape and carnal knowledge; false charges of unchastity; seduction and seduction by a teacher; adultery; incest; indecent acts with children, except for section (b) relating to enticing or luring children to a place to take indecent liberties; and fornication.

Section 14 is the amendatory provision. Generally, current statutes that use the words rape or carnal knowledge would be amended to conform to the new language of the bill.

(a) The murder statute, Section 22-2401 would be amended by striking the word rape, and inserting the sexual assault in the first degree.

(b) Assault with intent to commit rape, Section 22-501 would be amended to include first and second degree sexual assault, and unlawful sexual acts with older and younger children, thereby maintaining that crime's current coverage.

(c) For the definition of Section 22-3201 crime of violence, the sexual assault in the first and second degree would be used instead of rape.

(d) The sexual psychopath provision, Section 22-3504 which sets out the requirements of filing a statement would be amended by deleting the word rape, and insert the words sexual assault in the first or second degree.

(e) The prostitution law Section 22-2701 would be amended by striking that portion that prohibits the solicitation for immoral or lewd purpose, and by modifying the word prostitution by the words heterosexual or homosexual. This language is designed to include any commercial sexual act.

(f) Section 22-1112(a) lewd, indecent, or obscene acts would be amended by requiring that any lewd, obscene or indecent proposal be made with reckless disregard that someone perceiving the proposal will be seriously offended. Currently, there is no requirement of reckless disregard. Section 22-112(b) is intended to maintain current law.

(g) Section 16-2301 would be amended by deleting the term forcible rape, and inserting the term sexual assault in the first degree in the definition of child, which is the section that defines what crimes a person under sixteen can commit and be charged as an adult.

(h) Section 23-1331 which defines dangerous crimes and crimes of violence in subchapter II or release and pretrial detention would be amended to use first degree sexual assault instead of forcible rape, and unlawful sexual acts with an older child and younger child instead of carnal knowledge of a female under sixteen.

Section 15 establishes the effective date of the provision.

EXECUTIVE COMMENTS

Your committee received the following comments from the Executive Branch as testimony at the public hearings held on March 12 and 13 on this bill. The comments are attached as Appendix A. No additional comments have been received.

FISCAL IMPACT

The bill is not expected to have any fiscal impact. A fiscal impact analysis of this bill had been requested from the Executive Branch. No comments have been received.

COMMITTEE ACTION

On Wednesday, May 27, 1981, the Committee on the Judiciary met to mark-up Bill No. 4-122. The bill was tabled to consider some amendments. On Wednesday, June 3, 1981, a special meeting of the Committee on the Judiciary was held to mark-up and report Bill No. 4-122 as an amendment in the nature of a substitute. At that time, one amendment was made, and your Committee voted to recommend the bill as amended for Council passage by the following vote margin: three (3) in favor (Clarke, Rolark, Crawford); none (0) opposed. The accompanying report was approved by the Committee by the same vote margin.

APPENDIX A

Bill 4-122: DISTRICT OF COLUMBIA SEXUAL ASSAULT
REFORM ACT OF 1981

The District Government supports, subject to the comments made below, the proposed bill's attempt to rationalize District of Columbia sexual assault law and replace existing law with statutes that reflect modern society and the public outrage which certain types of sexual assaults have produced in recent times.

First, we have reservations with respect to the overall schema of the penalty provisions. The Bill reduces the current maximum penalty for sexual assault in the first degree from life imprisonment to a maximum penalty of twenty years. While it may be contended that a twenty year sentence is sufficient to insure that the offender will not perpetrate the offense in the future, we doubt that the community as a whole will understand the motivation underlying so drastic a reduction in the maximum penalty for this most heinous offense. It seems that this particular moment in our history is an inappropriate one to send a signal, by such a reduction, that may cause the Council's and our concern about the crime of rape to be misinterpreted. And, as a practical matter, some forcible rapes are so violent and so brutal as to require, simply as a manifestation of society's outrage, a potential maximum sentence higher than twenty years, particularly in view of the distinct possibility that such an offender may be paroled at a much earlier date.

On the other hand, the maximum penalty associated with a sexual act with an older child (ten years) may be unduly harsh. Truly non-forcible sexual acts between teenagers seem far less offensive, at least from the standpoint of the criminal law, than other types of conduct prescribed by the Bill. It is difficult to envision a situation in which a non-forcible sexual act between a 19-year old and a 15-year old, for example, would justify a ten year sentence. Yet such a penalty would be permissible under section 6 of the proposed Bill.

We agree, however, that unlawful sexual contact with a younger child may justify an increased maximum penalty, a point made by the United States Attorney in comments submitted today. While we would not be offended by the three year maximum for such conduct prescribed in section 9 of the Bill if the conduct occurred between teenagers relatively close in age, it seems to us that one standard ought to apply to unlawful sexual contact between, for example, a 19-year old and a 15-year old, while quite another should apply to contact between the same 19-year old and a 10-year old child. We are willing to work with the Council to draft appropriate language.

We note with favor the fact that the standard spousal exception has been eliminated for the most serious of the offenses covered by the proposed Bill, sexual assault in the first degree, although not for other offenses contained in the Bill. It is appropriate that at this time in our history

the law make it clear that forcible rape and similar conduct prohibited in section 3 of the Bill covers equally all persons, whatever the marital status of the parties may be.

We agree that the definition of "bodily injury" contained in section 2(a) of the Bill is too restrictive. It seems to us that sexual assault in the first degree (forcible rape) should appropriately apply to situation in which the sexual act is accompanied by threats of bodily injury less than extreme physical pain, physical disfigurement or the like. The degree of assault should turn on the actual fear imparted to and felt by the victim rather than on any "magical words" that may be spoken by the perpetrator at the time of the rape.

The issue of the age of consent is a perplexing one. We may need additional time to reflect on this issue. We are concerned, however, about the fact that the Bill lowers the age of consent from the current 16 years to 11 years of age. The assumption that the average child of that age possesses the necessary ability to make a rational decision whether to engage in sexual activities may not be warranted. In the absence of data in support of this change or convincing evidence that the current age limit has resulted in unjust prosecutions, we do not think that such a drastic alteration in current law is justified. When dealing with such tender ages it is troubling to provide that a person can consent at age 11 but an actor at age 11 or 12 is not to be held responsible.

Obviously, the age of consent represents a value judgment by society. In the past the judgment may have turned on various decisions by society as to when a youngster had reached a level of maturity entitling him or her to exercise certain privileges, and the end of mandatory school attendance requirements. It may well be arbitrary, but nevertheless reflects a societal judgment.

For a number of years the Commission on the Status of Women has proposed amendments to laws of sexual assault in the District of Columbia. Several meetings have occurred in the past in which the Commission's recommendations have been reviewed. We look with anticipation to reviewing the Commission's testimony with respect to Chapter 6. The proposals in this Chapter address areas of great concern to society, particularly since they relate to important relationships between persons who are not adults and may be helpless to prevent themselves from being victimized. The problems of proof involved with victims of tender age as well as the lasting effects on relationships between children and the persons who are responsible for their care require that these areas of the Criminal Code be given most careful consideration.

Committee Print
Committee on the Judiciary
June 3, 1981



David A. Clarke

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A REPORTED BILL

1.14

1.16

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

1.18

1.20

Councilmember David A. Clarke introduced the following bill, 1.24
which was referred to the Committee on the Judiciary.

To reform the sexual assault laws of the District of 1.27
Columbia, and for other purposes. 1.28

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, 1.32
That this act may be cited as the "District of Columbia 1.35
Sexual Assault Reform Act of 1981". 1.36

Sec. 2. Definitions. As used in this act, the term: 1.39
(1) "bodily injury" means injury involving significant 1.42
physical pain, loss or protracted impairment of the function 1.44
of a bodily member, organ, or mental faculty, or physical
disfigurement.

(2) "custodian" means any person who lives in the same household as and has some supervisory and disciplinary control over a person who is less than <u>eighteen</u> (18) years of age.	1.46 1.50 2.1 2.2
(3) "guardian" means any legally appointed guardian, the natural guardian, or a guardian in fact.	2.4 2.6
(4) "parent" means a natural parent, an adoptive parent, <u>foster parent</u> , or a stepparent.	2.8 2.9
(5) "relative" means grandparents, aunts and uncles, <u>related by blood either whole or half, by marriage or adoption, or</u> brothers and sisters, related by blood either whole or half.	2.11 2.12 2.14
(6) "sexual act" means conduct consisting of contact:	2.16
(a) between the penis and the vulva, anus, or mouth; (b) <u>between the mouth and the vulva or anus; or (c)</u> between an artificial sexual organ or other object or instrument employed in the manner of an artificial sexual organ, and the anus or vulva. For purposes of this definition, contact involving the penis, artificial sexual organ, or object or instrument occurs upon penetration, however slight and emission of semen is not required.	2.18 2.20 2.22 2.24 2.25 2.26 2.27
(7) "sexual contact" <u>means</u> touching a person's intimate parts, or causing the victim to touch <u>the victim's</u> own intimate parts or those of <u>the offender or of a third person</u>	2.29 2.32 2.33

whether directly or through clothing, for the purpose of arousing or gratifying the sexual desires of any person.	2.35
The term "intimate parts" means the primary genital area, the groin, the inner thigh, the anus, the buttocks, or the breast.	2.36
	2.37
(2) "spouse" means a person with whom the offender is living as husband or wife, whether by common law marriage or ceremonial marriage. The term " <u>spouse</u> " does not include a husband or wife <u>who are separated</u> .	2.39
	2.41
	2.42
	2.43
Sec. 3. Sexual Assault in the First Degree.	2.45
whoever engages in a sexual act with another person <u>and</u> compels that person to participate in or submit to the sexual act:	2.48
	2.50
(a) by actual physical force;	3.1
(b) by threatening or placing another in reasonable fear that any person will be subjected to death, kidnapping, or bodily injury; or	3.4
	3.5
(c) by substantially impairing the ability of the other person to appraise or control his or her conduct by administering or employing a drug, an intoxicant, hypnosis, or other similar means without the knowledge of or against the will of that other person and with the intent to engage in a sexual act;	3.8
	3.9
	3.10

~~commits an offense and upon conviction~~ shall be imprisoned 3.13
for ~~a term~~ not ~~exceeding~~ twenty ~~(20)~~ years.

Sec. 4. Sexual Assault in the Second Degree, 3.15

whoever engages in a sexual act with another person who 3.18
~~is~~ not that person's spouse knowing that the other person 3.20
is:

(a) unaware because of mental deficiency that a sexual 3.23
act is being committed; or

(b) physically incapable of resisting, or of 3.25
withholding consent to, the sexual act because of 3.26
intoxication by drugs, alcohol, hypnosis, or 3.27
similar means; 3.28

~~commits an offense and upon conviction~~ shall be imprisoned 3.31
for ~~a term~~ not ~~exceeding~~ ten ~~(10)~~ years.

Sec. 5. Unlawful Sexual Acts With a Younger Child, 3.33

whoever engages in a sexual act with a child, if 3.35

(a) the child is less than ~~twelve~~ ~~(12)~~ years of 3.37
age and is not the spouse of the offender; and 3.38

(b) the offender is ~~thirteen~~ ~~(13)~~ years of age or 3.41
older or more than two ~~(2)~~ years older than
the victim;

~~commit an offense and upon conviction~~ shall be imprisoned 3.44
for ~~a term~~ not ~~exceeding~~ twenty ~~(20)~~ years.

Sec. 6. Unlawful Sexual Act with an Older Child, 3.46

whoever engages in a sexual act with a child, if	3.48
(a) the child is at least <u>twelve</u> (12) years of age	3.51
but less than <u>sixteen</u> (16) years of age and is	
not the spouse of the offender; and	4.1
(b) the offender is at least four <u>(4)</u> years older	4.4
than the victim;	
commits an offense unless the offender reasonably believed	4.7
that the victim had attained the critical age. <u>Upon</u>	4.8
conviction, the offender shall be imprisoned for a term not	4.9
exceeding ten (10) years.	
Sec. 7. Unlawful Sexual Act with a Ward,	4.12
whoever engages in a sexual act with a <u>person under</u>	4.14
<u>eighteen (18) years of age:</u>	
(a) being a parent, relative, or guardian, and not that	4.17
<u>person's</u> spouse; or	4.18
(b) being a custodian and not the spouse of <u>that</u>	4.21
<u>person, and causes the sexual act in question by</u>	
<u>threatening to exercise his or her custodial</u>	4.22
<u>authority to affect the victim adversely unless the</u>	
<u>victim engages in the sexual act;</u>	4.23
commits an offense and upon conviction shall be imprisoned	4.26
for a <u>term not exceeding five (5) years.</u>	
Sec. 8. Unlawful Sexual Act with an Inmate or Patient,	4.28

Whoever engages in a sexual act with an inmate or 4.30
 patient or causes a sexual act to be engaged in between an 4.33
 inmate or patient and a third person, if[—]:

(a)(1) the inmate or patient is in a prison, hospital, 4.35
juvenile detention center, half-way house, or other similar 4.37
 institution and is not the spouse of the offender or of the 4.38
 third person; and

(2) the offender has supervisory or disciplinary 4.40
 authority over, or care, custody, or control with respect to 4.42
 the victim, and the offender causes the sexual act in
 question by threatening to withhold services for or 4.43
 treatment of the victim or to use his or her supervisory or
 disciplinary authority to affect the victim adversely unless 4.46
 the victim engages in the sexual act; or

(b)(1) the victim is a patient of the offender and is 4.48
 not the spouse of the offender or of the third person; and 4.49

(2) the victim submits to the sexual act due to 4.51
 representations made by the offender that the act engaged in 5.2
 constitutes or is related to a medical examination;

commits an offense and upon conviction shall be imprisoned 5.5
 for a term not exceeding five (5) years.

Sec. 9. Sexual Contact in the First Degree. 5.7

Whoever engages in sexual contact with another person 5.10
 who is not that person's spouse and[—]

(a) <u>compels that person to participate in or submit to</u>	5.12
<u>such sexual contact:</u>	
(1) by actual physical force;	5.14
(2) by threatening or placing another in reasonable	5.17
fear that any person will be subjected to death,	
kidnapping, bodily injury; or	
(3) by substantially impairing the ability of the other	5.20
person to appraise or control his or her conduct by	5.21
administering or employing drugs, alcohol,	
hypnosis, or other similar means, without the	5.22
knowledge or against the will of the victim and	5.23
with the intent to engage in sexual contact; or	
(D) the victim is a child under <u>sixteen</u> (16) years of	5.26
age and the offender is at least four <u>(4)</u> years older than	5.27
the victim, <u>unless the offender reasonably believed that the</u>	5.28
<u>child had attained the critical age;</u>	5.29
commits an offense and upon conviction shall be imprisoned	5.32
for a term not [more than] <u>exceeding</u> three <u>(3)</u> years.	5.33
Sec. 10. Sexual Contact in the Second Degree.	5.35
Whoever engages in sexual contact with another person	5.38
who <u>is</u> not that person's spouse:	
(a) without the consent of the other person;	5.40
(b) knowing that the other person is physically	5.42
incapable of resisting, or withholding consent to	5.43

the sexual contact, because of intoxication due to	5.44
drugs, alcohol, hypnosis or similar means; or	
(c) knowing that the other person is unaware because of	5.47
mental deficiency that a sexual contact is being	
committed;	
(d) under circumstances that would constitute an	5.49
offense under section 8 if such contact involved a	5.50
sexual act; or	
(e) the victim being less than eighteen (18) years of	6.2
age and the offender being;	6.3
(1) a parent, relative, or guardian; or	6.5
(2) a custodian who causes the sexual contact	6.8
through the exercise of his or her custodial authority;	
<u>commits an offense and upon conviction</u> shall be imprisoned	6.11
<u>for a term not exceeding one (1) year, or fined not more</u>	6.12
<u>than one thousand dollars (\$1,000) or both.</u>	
<u>Sec. 11. Additional Penalty.</u>	6.14
<u>If a person having been found guilty of sections 6, 7,</u>	6.16
<u>9, or 10, is the parent, grandparent, aunt, or uncle related</u>	6.18
<u>by blood, whole or half, or adoption of the victim, the</u>	
<u>penalty may be up to one and one-half (1 1/2) times that</u>	6.19
<u>prescribed for the particular offense.</u>	
<u>Sec. 12. Prosecution of Persons under Eighteen (18).</u>	6.21

<u>Except as provided by section 14(f), nothing in this act</u>	6-23
<u>shall repeal or modify D.C. Code, sec. 16-2301 et seq.</u>	6-24
<u>Sec. 13. Repealer Provisions.</u>	6-26
(a) Sections <u>808, 818, 871, 873, 874, and 875</u> of An Act	6-28
To establish a code of law for the District of Columbia,	6-29
approved March 3, 1901 (31 Stat. 1332; D.C. Code, sec. <u>22-</u>	6-30
<u>2801, -2304, -3002, -3001, -301, and -1901</u>) are repealed.	6-31
(b) <u>Sections 103(a), (c) and (d)</u> and 104 of An Act To	6-33
provide for the treatment of sexual psychopaths in the	6-35
District of Columbia, and for other purposes, approved June	6-36
9, 1948 (62 Stat. 347; D.C. Code, sec. 22-3501 <u>(a), (b) & (d)</u>	6-37
<u>& -3502</u>) is repealed.	
(c) Section 214 of An Act To provide for the more	6-39
effective prevention, detection, and punishment of crime in	6-40
the District of Columbia, approved June 29, 1953 (67 Stat.	
99; D.C. Code, sec. 22-1002) is repealed.	6-41
<u>Sec. 14. Amending Provisions.</u>	6-43
(a) An Act To establish a code of law for the	6-45
District of Columbia, approved March 3, 1901 (31 Stat. 1321;	6-47
D.C. Code, sec. 22-101 <u>et seq.</u>) is amended <u>as follows:</u> <u>(1)</u>	6-49
<u>Section 798 (D.C. Code, sec. 22-240) is amended</u> by striking	6-50
the word "rape" and inserting the phrase "sexual assault in	7-1
the first degree" in lieu thereof.	

(2) Section 803 (D.C. Code, sec. 22-501) is	7.4
amended by striking the word "rape" and inserting the phrase	7.6
"sexual assault in the first degree; <u>sexual assault in the</u>	
<u>second degree; unlawful sexual act with a younger child, or</u>	7.7
<u>unlawful sexual act with an older child</u> " in lieu thereof.	7.8
(b) Section 1 of An Act To control the possession,	7.10
sale, transfer, and use of pistols and other dangerous	7.13
weapons in the District of Columbia, to provide penalties,	
to prescribe rules of evidence, and for other purposes,	7.14
approved July 8, 1932 (47 Stat. 650; D.C. Code, sec. 22-	
3201) is amended by striking the word "rape" wherever it	7.15
appears and inserting the phrase "sexual assault in the	7.16
first degree <u>or second degree</u> " in lieu thereof.	7.17
(c) Section 202 of An Act To provide for the treatment	7.19
of sexual psychopaths in the District of Columbia, and for	7.21
other purposes, approved June 9, 1948 (62 Stat. 348; D.C.	
Code, sec. 22-3504) is amended by striking the phrase "rape	7.22
or assault with intent to rape" and inserting the phrase	
"sexual assault in the first degree <u>or second degree</u> or	7.24
assault with intent to commit sexual assault in the first	
degree <u>or second degree</u> " in lieu thereof.	7.25
(d) <u>Section 546 of An Act for the suppression of</u>	7.27
<u>prostitution in the District of Columbia, approved August</u>	7.28
<u>15, 1935 (49 Stat. 651; D.C. Code, sec. 22-2701) is amended</u>	

as follows: (1) by striking the phrase "or any other
immoral or lewd purpose"; and (2) by inserting following the
phrase "District of Columbia, for the purpose of" the phrase
"heterosexual or homosexual."

(a) Section 320 (a) and (b) of An Act for the
Preservation of the public peace and the protection of
property within the District of Columbia, approved July 29,
1892 (27 Stat. 324; D.C. Code, sec. 22-1112) is amended to
read as follows: "Sec. 320. (a) Any person or persons who
makes any obscene or indecent exposure of his or her person,
or commits any other lewd, obscene, or indecent act, or
makes a lewd, obscene, or indecent proposal with reckless
disregard that someone perceiving the proposal will be
seriously offended, commits an offense and upon conviction
shall be fined not more than three hundred dollars (\$300),
or imprisoned for a term not exceeding ninety (90) days, or
both, for each and every such offense.

(b) Any person or persons who makes any lewd, indecent,
or obscene exposure of his or her person, or commits any
other lewd, indecent, or obscene act or makes any sexual
proposal knowing he or she or they are in the presence of a
child under sixteen (16) years of age, commits an offense
and upon conviction shall be fined not more than one
thousand dollars (\$1000), or imprisoned for a term not

exceeding one (1) year, or both, for each and every such offense." 7.50

(f)(1) D.C. Code, sec. 16-2301 is amended by striking the phrase "forcible rape," and inserting the phrase "sexual assault in the first degree," in lieu thereof. 8.2 8.3

(2) D.C. Code sec. 22-1331 is amended (1) by striking the phrase "forcible rape," and inserting the phrase "sexual assault in the first degree," in lieu thereof and (2) by striking the phrase "carnal knowledge of a female under the age of sixteen (16) years," and inserting the phrase, "unlawful sexual acts with an older child and younger child," in lieu thereof. 8.5 8.7 8.9 8.11

Sec. 15. Effective Date. This act shall take effect 8.13
after a thirty (30)-day period of Congressional review 8.15
following approval by the Mayor (or in the event of veto by
the Mayor, action by the Council of the District of Columbia 8.16
to override the veto) as provided in section 602(c)(2) of 8.17
the District of Columbia Self-Government and Governmental
Reorganization Act, approved December 24, 1973 (87 Stat. 8.18
813; D.C. Code, sec. 1-147(c)(2)).

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